

United States
Circuit Court of Appeals

For the Ninth Circuit.

J. HOMER FRITCH, INCORPORATED, a Corporation,
E. T. KRUSE, MARY BELL PARKER BURNS,
CECELIA SUDDEN, JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Plaintiffs in Error,

vs.

THE UNITED STATES OF AMERICA,
Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court
of the Northern District of California,
Second Division.

Filed

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur. Title heads inserted by the Clerk are enclosed within brackets.]

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*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL PAR-
KER BURNS, CECELIA SUDDEN, JAMES
HOGG, JAMES P. TAYLOR and KATE E.
SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondents.

**Petition for Moneys Due from United States Under
Contract of Hire.**

Now come the above-named J. Homer Fritch,
Incorporated, E. T. Kruse, Mary Bell Parker Burns,
Cecilia Sudden, James Hogg, James P. Taylor and
Kate E. Spiers, and respectfully petition the above-
entitled court in a matter arising upon a contract
with the Government of the United States, and al-
lege as follows:

I.

That J. Homer Fritch, Incorporated, one of the
above-named plaintiffs, is, and at all times herein
mentioned was, a corporation duly organized and ex-
isting under and by virtue of the laws of the State of
California; that the principal place of business of said
corporation is, and at all times herein mentioned was,
the City and County of San Francisco, [1*] State
of California; that said plaintiffs are residents of the

*Page-number appearing at foot of page of original certified Record.

City and County of San Francisco, State of California, and at all times hereinafter mentioned were the owners of the steamship "Homer."

II.

That, at all times herein mentioned, W. I. Lembkey was the duly appointed, qualified and acting agent of the Department of Commerce and Labor of the United States of the Seal Fisheries of Alaska; that on or about the 24th day of April, 1911, a charter-party was made and entered into by and between plaintiffs and the said Department of Commerce and Labor of the Government of the United States, in its material portions in words and figures as follows, to wit:

"THIS CHARTER PARTY, made and concluded upon in the City of San Francisco, the 24th day of April, 1911, between J. Homer Fritch, Incorporated, owners of the good twin-screw steamship "Homer" of San Francisco of 501 tons gross register, and 331 tons net register, having engines of 350 nominal horse-power provided with proper certificate for hull and machinery, and classes — at — of — tons cubic capacity and 700 tons dead weight or thereabouts, inclusive of bunkers, which are of the capacity of about 65 tons of coal, and stores now at the port of San Francisco and Secretary of Commerce & Labor U. S. Charters of the City of

Witnesseth, That the said owners agree to lot, and the said Charterers agree to hire the said steamship from the time of delivery, for a period of about [2] 3½ months steamer to be placed at the disposal of

the Charterers, at San Francisco in such dock or at such wharf or place (where she may always safely lie afloat, at all times of tide), as the Charterers may direct, and being, on her delivery ready to receive cargo, and tight, staunch, strong and in every way fitted for the service, including necessary dunnage, having water ballast, steam winches and donkey-boiler with capacity to run all the steam winches at one and the same time (and with full complement of officers, seamen, engineers and firemen for a vessel of her tonnage), to be employed in carrying lawful merchandise; including petroleum or its products in cases, and passengers so far as accommodations will allow (but any expense necessary to fit the steamer to comply with United States or other Passenger Inspection laws to be borne by Charterers) between ports within the following limits: Pacific Coast ports and Unalaska, Dutch Harbor, the Pribilof Islands, Bering Sea, as the Charterers or their Agents shall direct, on the following conditions:

* * *

4. That the Charterers shall pay for the use and hire of the said vessel at the rate of One Hundred and Forty-two 50/100 (\$142.50) Dollars per day U. S. Gold Coin, commencing on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a day; hire to continue until her delivery in like good order and condition to the Owners (unless lost) at the port of San Francisco, Cal. * * * [3]

6. Payment of said hire to be made in U. S. Gold Coin monthly at the end of each month. * * *

21. That the Charterers have the option, at any time during this Charter, of purchasing the said vessel for the sum of Forty-five Thousand (\$45,000.-00) Dollars against which any amount paid for the hire of the said vessel less cost of operation shall be set off and deducted, but that the purchasers shall pay interest at the rate of 6% per annum (and insurance) on the amount of purchase money from the date of this Charter to the completion of the sale.” * * *

J. HOMER FRITCH (INCORPORATED),
[Corporate Seal] J. HOMER FRITCH,
Prest.

Subject to approval of Dept. of Com. & Labor.

W. I. LEMBKEY,
Agent Seal Fisheries.”

That in making and entering into and executing said charter-party said plaintiff, J. Homer Fritch, Incorporated, acted for itself and for and in behalf of, and as the duly authorized agent of the plaintiffs herein, E. T. Kruse, Mary Bell Parker Burns, Cecelia Sudden, James Hogg, James P. Taylor and Kate E. Spiers. That said charter-party was duly approved by the Department of Commerce and Labor of the United States, and by the secretary thereof. [4]

III.

That thereafter, and to wit on the 15th day of May, 1911, said steamship “Homer” was placed by plaintiffs at the disposal of said Department, and said secretary, in all respects as to time, condition

of said vessel and equipment thereof, and otherwise in compliance with the terms of said charter-party; that thereupon and on the same day said Department and said secretary accepted said steamship "Homer," together with its equipment, and full complement of officers, seamen, engineers and firemen, as provided in said charter-party; that pursuant to said charter-party said steamship "Homer" was employed and retained by said Department and said secretary from and including the said 15th day of May, 1911, to and including the 12th day of September, 1911, at noon of said last-mentioned day.

IV.

That the hire of said steamship "Homer" becoming due under the terms of said charter-party on and subsequent to the 1st day of September, 1911, has not been paid to plaintiffs by said department or said secretary, or otherwise, or at all, nor has any portion thereof been so paid; that plaintiffs have frequently demanded payment of the same from said department and said secretary, but that said demands have been refused; that there is now due, owing and unpaid to plaintiffs from the United States the sum of one thousand, seven hundred and eighty-one and 25/100 (1781.25) dollars, as hire of said steamship "Homer" as aforesaid. [5]

And for a further cause of claim against the said United States, plaintiffs allege, in addition to all of the facts contained in paragraphs I, II and III of plaintiffs' first cause of claim hereinabove set forth, which are hereby repeated and made a portion of this cause of claim, the following:

IV.

That at all times during the month of September, 1911, and particularly upon the 12th day of September, 1911, Charles Earl was the duly appointed, qualified and acting secretary of the Department of Commerce and Labor of the United States; that on or about said 12th day of September, 1911, said Charles Earl, as such secretary, caused to be transmitted from the City of Washington, District of Columbia, to plaintiffs, at the City and County of San Francisco, and plaintiffs received at said last-mentioned place from said Charles Earl, as such secretary, a telegram in the following words and figures, to wit:

“Washington, D. C., Sept. 12-1911.

J. Homer Fritch, Inc.

San Francisco, Cal.

Would like to have option for purchase of Homer extended thirty days on terms mentioned in paragraph twenty-one of charter otherwise charter to terminate as provided therein answer.

CHARLES EARL,
Acting Secretary.”

That the signature to said last-mentioned telegram was the signature of Charles Earl, as acting secretary of the Department of Commerce and Labor of the United [6] States.

That said last-mentioned telegram was, by said Charles Earl, secretary as aforesaid, addressed to, and caused to be transmitted to, said J. Homer Fritch, Incorporated, for itself and as the agent of the other plaintiffs herein, and the same was re-

ceived by said J. Homer Fritch, Incorporated, for itself and as the duly appointed agent of the other plaintiffs herein.

That on the 14th day of September, 1911, plaintiffs caused to be transmitted to said Charles Earl, as secretary of the Department of Commerce and Labor of the United States, at the City of Washington, District of Columbia, and said Charles Earl, secretary as aforesaid, at said date and place received from plaintiffs, a telegram in the following words and figures, to wit:

“San Francisco, Sept. 14, 1911.

Acting Secretary,

Dep't. of Commerce & Labor,

Washington, D. C.

As requested in your telegram of twelfth instant charter Steamer Homer hereby extended for further period of thirty days from September thirteenth nineteen eleven with option of purchase.

J. HOMER FRITCH, Inc.”

That said telegram last referred to was sent by plaintiffs, as aforesaid, as a reply to said telegram dated September 12, 1911, hereinabove set forth.

That, in signing and causing to be transmitted as aforesaid said telegram dated September 14, 1911, said J. Homer Fritch, Incorporated, acted for itself and for and [7] in behalf of, and as the duly appointed agent of plaintiffs herein, E. T. Kruse, Mary Bell Parker Burns, Cecilia Sudden, James Hogg, James P. Taylor and Kate E. Spiers.

That, pursuant to the aforesaid extension of said charter, said steamship “Homer” was held by plain-

tiffs at San Francisco, from and including the 12th day of September, 1911, at noon of said day, to and including the 13th day of October, 1911, ready to receive cargo and in all respects in the condition required by the terms of said charter-party, with a full complement of officers, seamen, engineers and firemen for a vessel of her tonnage, for said Department and said secretary. That at all of said times said Department and said secretary knew or had reason to know that said steamship "Homer" was being so held in readiness by plaintiffs, as aforesaid.

VI.

That the hire of said steamship "Homer" becoming due in accordance with the terms of said charter-party as extended as above set forth from and including the 13th day of September, 1911, to and including the 12th day of October, 1911, has not been paid to plaintiffs by said Department or said secretary or otherwise or at all, nor has any portion thereof been so paid; that plaintiffs have frequently demanded the payment of the same from said Department and said secretary and such payment has been refused; that there is now due, owing and unpaid from the United States to plaintiffs, as such hire, the sum of four thousand four hundred and eighty-eight and $75/100$ (4,488.75) dollars.

WHEREFORE, plaintiffs ask the judgment of [8] this Honorable Court against the said United States for the sum of six thousand one hundred and twenty-seven and $50/100$ (6127.50) dollars, with interest thereon, and their costs of suit, and for such other and further relief as may be meet in the premises.

And plaintiffs will ever pray, etc.

J. HOMER FRITCH (INCORPORATED),

By JAMES B. SMITH,

President.

E. T. KRUSE.

MARY BELL PARKER BURNS.

CECILIA F. SUDDEN.

JAMES HOGG.

JAMES P. TAYLOR.

KATE E. SPIERS.

IRA A. CAMPBELL,

Attorney for Plaintiffs and Petitioners. [9]

State of California,

City and County of San Francisco,—ss.

James B. Smith, being first duly sworn, deposes and says:

That he is an officer, to wit, the president of J. Homer Fritch, incorporated, the corporation named as one of the petitioners and plaintiffs herein; that he makes this verification for and in behalf of said corporation, and as its president; that he has read the foregoing petition and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon his information or belief, and as to those matters, that he believes it to be true.

JAMES B. SMITH.

Subscribed and sworn to before me this 9th day of July, A. D. 1912.

[Seal]

JAMES MASON,

Notary Public in and for the City and County of San Francisco, State of California.

[Endorsed]: Filed Sep. 12, 1912. Jas. P. Brown,
Clerk. By J. A. Schaertzer, Deputy Clerk. [10]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

J. HOMER FRITCH, INCORPORATED, a Corpora-
tion, E. T. KRUSE, MARY BELL PARKER
BURNS, CECELIA SUDDEN, JAMES
HOGG, JAMES P. TAYLOR and KATE E.
SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondents.

**Affidavit of Service upon the United States District
Attorney, and of Mailing to the Attorney
General of the United States.**

City and County of San Francisco,
State of California,
Northern District of California,—ss.

C. T. Elliott, being first duly sworn, deposes and
says:

That he is, and at all times herein mentioned was,
the duly appointed, qualified, and acting United
States Marshal for the Northern District of Cali-
fornia;

That, on the 12th day of September, 1912, at the
City and County of San Francisco, State of Cali-
fornia, in the Northern District of California, affiant
personally served [11] upon John L. McNab,

Esq., the District Attorney of the United States, in and for the Northern District of California, personally, the annexed summons in the above-entitled action, by personally delivering to and leaving with said John L. McNab, personally, a true and correct copy of said summons; that at the same time and place affiant served said John L. McNab, District Attorney of the United States, as aforesaid, with the petition in the above-entitled action, by personally delivering to and leaving with said John L. McNab, personally, a true and correct copy of said petition; that said copy of said summons, and said copy of said petition, hereinabove referred to, were duly certified by the clerk of the said District Court of the United States, in and for the Northern District of California, Second Division thereof, to be true and correct copies of said summons and of said petition;

That, on the said 12th day of September, 1912, at the City and County of San Francisco, State of California, in the Northern District of California, affiant mailed a true and correct copy of said petition to the Attorney-General of the United States, by registered mail; that said copy of said petition last referred to was duly certified to be a true and correct copy of said petition by the Clerk of the District Court of the United States, in and for the Northern District of California, Second Division thereof; that affiant enclosed and sealed said copy in an envelope, addressed as follows, to wit:

Hon. George W. Wickersham,
Attorney-General of the United States,

Washington, D. C. [12]

12 *J. Homer Fritch, Incorporated, et al.*

That affiant personally deposited said sealed envelope in the United States Postoffice, at the time and place above specified, postage thereon being fully prepaid.

And further affiant saith not.

C. T. ELLIOTT.

Subscribed and sworn to before me, this 23d day of September, 1912.

[Seal]

W. B. MALING,
Deputy Clerk, U. S. District Court, Northern District of California.

[Endorsed]: Filed Oct. 8, 1912. Jas. P. Brown, Clerk. By J. A. Schaertzer, Deputy Clerk. [13]

In the District Court of the United States, in and for the Northern District of California, Second Division.

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Corporation, E. T. KRUSE, MARY BELL PARKER BURNS, CECELIA SUDDEN, JAMES HOGG, JAMES P. TAYLOR and KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondents.

Amended Answer.

By leave of Court first had and obtained, the respondent files his amended answer herein and answering the first cause of action herein set forth,

admits that the hire of said steamship "Homer" becoming due under the terms of said charter-party on and subsequent to the first day of September, 1911, has not been paid to plaintiffs by said Department or said secretary, but denies that no portion thereof has been paid and in this regard respondent alleges that the sum of one hundred and seventy-six (\$176.00) dollars has been paid thereon by the said respondent.

Denies that plaintiffs have frequently demanded payment of the same from said Department or said secretary of the treasury or at all and denies that said demands have been refused and in this regard the [14] respondent alleges that on the 25th day of October, 1911, respondent wrote the plaintiffs herein as follows:

"You are therefore requested to submit to the Department bills for the chartering of the 'Homer' from September 1 to September 12, noon, 11½ days, at \$142.50 per day, and to give credit thereon to the Department for 32 tons of coal remaining in the Homer's bunkers at the time of the relinquishment at \$5.50 per ton."

Denies that there is now due, owing or unpaid to the plaintiffs from the United States, the sum of \$1,781.25 as hire of said steamship "Homer" on account of the matters set forth in the first count of said petition as aforesaid in any other or greater sum than \$1,462.75.

And for an answer to the second cause of action set forth in said petition, respondent denies and avers as follows, to wit:

Respondent has no information or belief upon the subject sufficient to enable him to answer the matters set forth in the last paragraph of section 4 of the said second count and basing his denial upon that ground, denies that pursuant to an extension of the charter referred to therein or at all, was the steamship "Homer" held by plaintiffs at San Francisco from and including the 12th day of September, 1911, at noon of said day to and including the 13th day of October, 1911, or at all, ready to receive cargo or in all or any respects in the condition required by the terms of said charter-party with a full complement of officers, or seamen or engineers or firemen for a vessel of her tonnage for the said Department or the said secretary.

Denies that at all of said times or at all did the said Department or said secretary know or have reason to know that said steamship "Homer" was being held in readiness by plaintiffs as aforesaid. [15]

Denies that any hire of the said steamship "Homer" became due in accordance with the terms of the said charter-party as extended and denies that the said charter-party was extended from or after the 13th day of September, 1911, or at all.

Admits that plaintiffs have frequently demanded the payment of the sum of \$4,488.75 on account of said hire for said alleged extension but denies that the said hire or any hire on account of any extension of said charter-party is now due, owing or unpaid from the United States to the plaintiffs.

JOHN W. PRESTON,
United States Attorney,
Attorney for Respondent.

State of California,

City and County of San Francisco,—ss.

M. A. Thomas, being first duly sworn, deposes and says that he is an Assistant United States Attorney for the Northern District of California; that no officer of the United States or of the Seal Fisheries of Alaska who is familiar with the facts in the above-entitled cause is within the State of California; that for the foregoing reasons affiant verified the foregoing answer and states that he has read the same and knows the contents thereof and that the same is true, except as to matters therein stated on information or belief and as to those matters he believes it to be true.

M. A. THOMAS.

Subscribed and sworn to before me this 11th day of May, 1915.

WALTER B. MALING,

Clerk U. S. District Court, Nor. Dist. Calif. [16]

[Endorsed]: Filed May 11th, 1915. Walter B. Maling, Clerk. [17]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL
PARKER BURNS, CECELIA SUDDEN,
JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondents.

Stipulation and Agreed Statement of Facts.

It is hereby stipulated and agreed between the
plaintiffs above named and the United States, re-
spondent herein, as follows:

1. That all of the facts alleged in count one of the
complaint herein are true with the following excep-
tions:

(a) The amount due for the hire of the S. S.
“Homer” from September 1, 1911, to noon of Sep-
tember 12, 1911, was \$1,638.75 instead of \$1,781, 25,
as alleged in paragraph IV of said count one;

(b) Plaintiffs’ consent that \$176 be offset against
this amount for coal left in the bunkers of said S. S.
“Homer,” when possession was relinquished by the
United States. [18]

2. A jury having been duly waived by the respec-
tive parties, and the cause having been submitted

to the Court, sitting without a jury, it is hereby stipulated and agreed by and between the respective parties hereto that the following facts may be deemed and taken as proven upon the trial of said action and upon any trial thereof, and may be deemed to be in evidence for all purposes upon such trial:

I.

That J. Homer Fritch, Incorporated, one of the above-named plaintiffs, is, and at all times herein mentioned was, a corporation duly organized and existing under and by virtue of the laws of the State of California; that the principal place of business of said corporation is, and at all times herein mentioned was, the City and County of San Francisco, State of California; that said plaintiffs are residents of the City and County of San Francisco, State of California, and at all times hereinafter mentioned were the owners of the S. S. "Homer."

II.

That at all times herein mentioned W. I. Lembkey was the duly appointed, qualified and acting agent of the Department of Commerce and Labor of the United States of the Seal Fisheries of Alaska; that on or about the 24th day of April, 1911, a charter-party was made and entered into by and between plaintiffs [19] and the said Department of Commerce and Labor of the Government of the United States. That said charter-party was in the words and figures following, to wit:

"TIME CHARTER.

THIS CHARTER-PARTY, made and concluded upon in the City of San Francisco, the 24th

day of April, 1911, between J. Homer Fritch, Incorporated, owners of the good twin-screw steamship "Homer" of San Francisco of 501 tons gross register, and 331 tons net register, having engines of 350 nominal horse-power provided with proper certificate for hull and machinery, and classes — at — of — tons cubic capacity and 700 tons dead weight or thereabouts, inclusive of bunkers, which are of the capacity of about 65 tons of coal, and stores now at the port of San Francisco and Secretary of Commerce & Labor U. S. Charters of the City of

Witnesseth, That the said owners agree to let, and the said Charterers agree to hire the said steamship from the time of delivery, for a period of about 3½ months steamer to be placed at the disposal of the Charterers, at San Francisco in such dock or at such wharf or place (where she may always safely lie afloat, at all times of tide), as the Charterers may direct, and being, on her delivery ready to receive cargo, and tight, staunch, strong and in every way fitted for the service, including necessary dunnage, having water ballast, steam winches and donkey-boiler with capacity to run all the steam winches at one and the same time (and with full complement of officers, seamen, engineers [20] and firemen for a vessel of her tonnage), to be employed in carrying lawful merchandise, including petroleum or its products in cases, and passengers so far as accommodations will allow (but any expense necessary to fit the steamer to comply with the United States or other Passenger Inspection laws to be borne by Charter-

ers) between ports within the following limits: Pacific Coast ports and Unalaska, Dutch Harbor, the Pribilof Islands, Bering Sea, as the Charterers or their Agents shall direct, on the following conditions:

1. That the owners shall provide and pay for all provisions, wages and consular shipping and discharging fees of the Captain, Officers, Engineers, Firemen and crew; shall pay for the insurance of the vessel, also for all the cabin, deck, engine-room and other necessary stores, and maintain her in a thoroughly efficient state in hull and machinery for and during the service.

2. That the Charterers shall provide and pay for all the Coals, Port Charges, Pilotages, Agencies, Commissions, Consular Charges (except those pertaining to the captain, officers or crews), and all other charges whatsoever, except those before stated.

3. That the Charterers shall accept and pay for all Coal in the Steamer's Bunkers, and the Owners shall on expiration of this Charter-party, pay for Coal left in the bunkers, at the current market prices at the respective ports where she is delivered to them.

4. That the Charterers shall pay for the use and hire of the said vessel at the rate of One hundred and Forty-two 50/100 (\$142.50) Dollars per day U. S. Gold Coin, commencing [21] on and from the day of her delivery, as aforesaid, and at and after the same rate for any part of a day; hire to continue until her delivery in like good order and condition to the Owners (unless lost) at The port of San Francisco, Cal.

5. That should the steamer be on her voyage towards the port of return delivery at the time a payment of hire becomes due, said payment shall be made for such a length of time as the owners or their agents, and Charterers, or their agents, may agree upon as the estimated time necessary to complete the voyage, and when the steamer is delivered to owner's agents any difference shall be refunded by steamer or paid by Charterers, as the case may require.

6. Payment of said hire to be made in U. S. Gold Coin monthly at the end of each month, and in default of such payment the Owners shall have the faculty of withdrawing the said steamer from the service of the Charterers without prejudice to any claim they (the Owners) may otherwise have on the Charterers, in pursuance of this Charter.

7. That the cargo or cargoes to be laden and / or discharged in any dock or at any wharf or place that the Charterers or their Agents may direct, provided the Steamer can always safely lie afloat at any time of tide.

8. That the whole reach of the Vessel's Holds, Decks, and usual place of loading, and accommodation of the ship (not more than she can reasonably stow and carry), shall be at the Charterer's disposal, reserving only proper and sufficient space for Ship's officers, crew, tackle, apparel, furniture, provisions, stores and fuel.

9. That the Captain shall prosecute his voyages with the utmost dispatch, and shall render all customary assistance [22] with Ship's crew and

boats. That the captain (although appointed by the Owners), shall be under the orders and direction of the Charterers as regards employment, agency, or other arrangements; and the Charterers hereby agree to indemnify the owners from all consequences or liabilities that may arise from the Captain signing Bills of Lading or otherwise complying with the same.

10. That if the Charterers shall have reason to be dissatisfied with the conduct of the Captain, Officers or Engineers, the Owner shall, on receiving particulars of the complaint, investigate the same, and, if necessary, make a change in the appointments.

11. That the Charterers shall have permission to appoint a super-cargo who shall accompany the steamer and see that voyages are prosecuted with the utmost dispatch. He is to be furnished free of charge, with first-class accommodations, and same fare as provided for captain's table.

12. That the Master shall be furnished from time to time with all requisite instructions and sailing directions, and shall keep a full and correct Log of the voyage or voyages, which are to be patent to the Charterers or their Agents.

13. That the Master shall use all diligence in caring for the ventilation of the cargo.

14. That the Charterers shall have the option of continuing this charter for a further period of thirty days (30) on giving notice thereof to the owners or their agents twenty (20) days previous to the expiration of the first-named term, or any declared option.

15. That if required by Charterers, time not to commence [23] before May 15, 1911, and should Steamer not be ready for delivery on or before May 18, 1911, Charterers or their agents to have the option of cancelling this charter, at any time not later than the day of Steamer's readiness.

16. That in the event of loss of time from deficiency of men or stores, break-down of machinery, stranding, or damage preventing the working of the Vessel for more than twenty-four consecutive working hours, the payment of hire shall cease until she be again in efficient state to resume her service, but should the Vessel be driven into port or anchorage by stress of weather or from any accident to the cargo, such detention or loss of time shall be at the Charterer's risk and expense.

17. That should the Vessel be lost, freight paid in advance and not earned (reckoning from the date of her loss), shall be returned to the Charterers. The act of God, enemies, fire, restraint of Princes, Rulers and the People, and all dangers and accidents of the Seas, Rivers, Machinery, Boilers, Steam Navigation, and Errors of Navigation, throughout this Charter-Party, always mutually excepted.

18. That should any dispute arise between the owners and the Charterers, the matter in dispute shall be referred to three persons in San Francisco, California, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision, or that of any two of them, shall be final, and for the purpose of enforcing any award, this agreement may be made a rule of the Court.

19. That the owners shall have a lien upon all cargoes and all sub-freights, for any amounts due under this Charter, and the Charterers to have a lien on the Ship for [24] all moneys paid in advance and not earned.

20. That all derelicts and salvages shall be for Owners' and Charterers' equal benefit. General Average, if any, to be according to York-Antwerp rules, 1890.

21. That the Charterers have the option, at any time during this Charter, of purchasing the said vessel for the sum of Forty-five Thousand (\$45,000.00) Dollars against which any amount paid for the hire of the said Vessel less cost of operation shall be set off and deducted, but that the Purchasers shall pay interest at the rate of 6% per annum (and insurance) on the amount of purchase money from the date of this Charter to the completion of sale.

22. That as the steamer may be from time to time employed in tropical waters during the term of this Charter, steamer is to be docked, bottom cleaned and painted whenever Charterers and Master think necessary, at least once in every six months and payment of the hire to be suspended until she is again in proper state for the service.

23. Steamer to work night and day if required by Charterers, and all steam winches to be at Charterers' disposal during loading and discharging, and Steamer to provide men to work same both day and night as required, Charterers agreeing to pay extra expense if any incurred by reason of night work, at the current local rate.

24. It is also mutually agreed, that this Charter is subject to all the terms and provisions of and all the exemptions from liability contained in the Act of Congress of the United States, approved on the 13th day of February, 1893, and entitled "An Act relating to the Navigation of Vessels, etc." [25]

25. Penalty for non-performance of this Contract, estimated amount of Charter.

Charterers are to pay at the rate of One Dollar (\$1.00) per day for subsistence supplied to passengers.

It is further understood that Capt. A. Donaldson shall go as master of the Stmr. "Homer" during the life of this charter.

J. M. LITCHFIELD, Witness J. HOMER FRITCH (INCORPORATED. (Seal)
to the signature of

J. HOMER FRITCH, Prest.,
Agent.

Dated at, 19...

Subject to Approval of Dept.
of Com. & Labor:

J. M. LITCHFIELD, Witness
the signature of

W. I. LEMBKEY,
Agent Seal Fisheries.

a copy of the original Charter-party.

According to telegram of September 12th received from Mr. Chas. Earl, Acting Secretary, Department of Commerce & Labor, this charter is hereby extended for a period of 30 days from September 13th, 1911.

Subject to approval of Dept. of Commerce & Labor:

W. I. LEMBKEY,
Agent Seal Fisheries."

That in making and entering into and executing

said charter-party said plaintiff, J. Homer Fritch, Incorporated, acted for itself and for and in behalf of, and as the duly authorized agent of, the plaintiffs herein, E. T. Kruse, Mary Bell Parker Burns, Cecelia Sudden, James Hogg, James P. Taylor and Kate E. Spiers. That said charter-party was duly approved by the Department '[26]' of Commerce and Labor of the United States, and by the secretary thereof.

III.

That thereafter and to wit, on the 15th day of May, 1911, said S. S. "Homer" was placed by plaintiffs at the disposal of said Department, and said secretary, in all respects as to time, condition of said vessel and equipment thereof, and otherwise in compliance with the terms of said charter-party; that thereupon and on the same day said Department and said secretary accepted said S. S. "Homer," together with its equipment, and full complement of officers, seamen, engineers and firemen, as provided in said charter-party; that pursuant to said charter-party said S. S. "Homer" was employed and retained by said Department and said secretary from and including the said 15th day of May, 1911, to and including the 12th day of September, 1911, at noon of said last-mentioned day.

IV.

That at all times during the month of September, 1911, and particularly upon the 12th day of September, 1911, Charles Earl was the duly appointed, qualified and acting secretary of the Department of Commerce and Labor of the United States; that on

or about said 12th day of September, 1911, said Charles Earl, as such secretary, caused to be transmitted from the City of Washington, District of Columbia, to plaintiffs, at the City and County of San Francisco, and plaintiffs received at said last mentioned place from said Charles Earl, as such secretary, a telegram in the following words and figures, to wit: [27]

“Washington, D. C. Sept. 12-1911.

J. Homer Fritch, Inc.

San Francisco, Cal.

Would like to have option for purchase of Homer extended thirty days on terms mentioned in paragraph twenty one of charter otherwise charter to terminate as provided therein answer.

CHARLES EARL,

Acting Secretary.”

That the signature to said last-mentioned telegram was the signature of Charles Earl, as acting secretary of the Department of Commerce and Labor of the United States.

That said last-mentioned telegram was, by said Charles Earl, secretary as aforesaid, addressed to, and caused to be transmitted to, said J. Homer Fritch, Incorporated, for itself and as the agent of the other plaintiffs herein, and the same was received by said J. Homer Fritch, Incorporated, for itself and as the duly appointed agent of the other plaintiffs herein.

That thereafter, and to wit on or about the 13th day of September, 1911, plaintiffs submitted said last-mentioned telegram to the said W. I. Lembkey,

the said agent of said secretary and said Department for the management of the Alaska Seal Fisheries, and thereupon the said Lembkey endorsed the following upon the original of said charter-party agreement:

“According to telegram of September 12th received from Mr. Chas. Earl, Acting Secretary, Department of Commerce & Labor, this Charter is hereby extended for a period of 30 days from September 13th, 1911.

Subject to approval of Dept. of Commerce & Labor,

W. I. LEMBKEY,
Agent Seal Fisheries.” [28]

That thereupon, and on the 14th day of September, 1911, plaintiffs caused to be transmitted to said Charles Earl, as secretary of the Department of Commerce and Labor of the United States, at the City of Washington, District of Columbia, and said Charles Earl, secretary as aforesaid, at said date and place received from plaintiffs, a telegram in the following words and figures, to wit:

“San Francisco, Sept. 14, 1911.

Acting Secretary,

Dept. of Commerce & Labor,

Washington, D. C.

As requested in your telegram of twelfth instant charter steamer “Homer” hereby extended for further period of thirty days from September thirteenth nineteen eleven with option of purchase.

J. HOMER FRITCH, INC.”

That in signing and causing to be transmitted, as

aforesaid, said telegram dated September 14th, 1911, said J. Homer Fritch, Incorporated, acted for itself and for and in behalf of, and as the duly appointed agent of plaintiffs herein, E. T. Kruse, Mary Bell Parker Burns, Cecelia Sudden, James Hogg, James P. Taylor and Kate E. Spiers.

V.

That said S. S. "Homer" was employed by said secretary and said Department during the term of said charter-party, in connection with the work of said Department in carrying on the administration of the Alaska Seal Fisheries, and was sent by said Department to the Coast of Alaska; that said S. S. "Homer" arrived at the port of San Francisco from the coast of Alaska, prior to the twelfth day of September, 1911, being still in the possession of the said United States, pursuant to said charter-party [29] agreement, and having been continuously in the possession of said United States, since May 15th, 1911, as aforesaid, and forthwith proceeded to discharge her cargo;

That on the tenth day of October, 1911, plaintiffs caused to be transmitted to said secretary and said Department a telegram in the following words and figures, to wit:

"San Francisco, Oct. 10, 1911.

George M. Bowers,

Commissioner of Fisheries,

Dep't. of Commerce & Labor,

Washington, D. C. [30]

Your extension of charter and option of Steamer 'Homer' expires October 13th. Should this ex-

pire without further action on the part of the department Ship will go to holder of second option upon which one thousand dollars has been paid. Should you indicate that you wish to exercise your option terms of payment can be satisfactorily arranged without doubt. Kindly wire your wishes in the premises.

J. HOMER FRITCH."

That in sending said last-mentioned telegram said J. Homer Fritch acted in behalf of all of the plaintiffs herein; that said last-mentioned telegram was received by said secretary and said Department prior to the twelfth day of October, 1911; that thereafter and on said twelfth day of October, 1911, said secretary and said Department, in the City of Washington, District of Columbia, caused to be transmitted to plaintiffs, in the City and County of San Francisco, State of California, a telegram in the following words and figures, to wit:

Washington, D. C. Oct. 12-11.

J. Homer Fritch, Inc.

Fife Bldg., Sanfran.

Replying yours Oct ten Bureau of Fisheries is not in position to purchase Homer.

I. H. DUNLAP,
Actg. Commr."

That said last-mentioned telegram was received by plaintiffs at said City and County of San Francisco on the thirteenth day of October, 1911.

That on or about the 25th day of October, 1911, said secretary and said Department mailed a letter in the City of Washington, District of Columbia,

to plaintiffs, notifying plaintiffs [31] that said Department would not require the use of said S. S. "Homer," and would not exercise its option to purchase said "Homer"; that said letter was received by plaintiffs on or about the —— day of November, 1911, and was in the following words and figures:

"Washington, October, 25, 1911.

Mr. J. Homer Fritch,
110 East Street,
San Francisco, Cal.

Sir:

Replying to your letter of the 14th instant, inclosing duplicate bills for charter of the steamship 'Homer' from September 1 to October 13, 1911, inclusive, you are informed that the vessel was discharged and relinquished to her owners on September 12 noon and that the Department has not extended or renewed the charter nor approved the action of any officer of the Department attempting to bind it for charter money beyond that time.

Respectfully,
(Sgd.) BEN J. CABLE,
Acting Secretary."

That on said last-mentioned date the said Ben J. Cable was the duly appointed and qualified acting secretary for said Department.

VI.

That nothing has been paid by said United States or by said Department or by any person or persons whomsoever to plaintiffs, or to any of them, or at all, on account of hire earned by said steamship "Homer" for the period referred to herein, that is

to say, from the 12th day of September, 1911, to and including the 13th day of October, 1911; that plaintiffs have frequently demanded the same from said United States and said Department since said 13th day of October, 1911, but that said demand has been refused. [32]

It is stipulated that upon the trial of said cause of action the said facts may be deemed as true and as in evidence and as proven in all respects and with the same effect as if evidence had been offered to prove the same; it is further stipulated that as to the matters covered by this stipulation, said statement of facts may be deemed and taken as special findings of fact, and may be deemed and treated as such for all purposes; it is further stipulated that the parties hereto may offer such evidence, and evidence of such additional facts, as they or either or any of them may desire.

Dated, San Francisco, California, March 16th, 1915.

IRA A. CAMPBELL,
Attorney for Petitioners and Plaintiffs.

JOHN W. PRESTON,
Attorney for Respondent.

[Endorsed]: Filed May 4, 1915. Walter B. Maling, Clerk. [33]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Corpora-
tion, E. T. KRUSE, MARY BELL PARKER
BURNS, CECELIA SUDDEN, JAMES
HOGG, JAMES P. TAYLOR and KATE E.
SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondents.

Waiver of Trial by Jury.

A trial by jury, in the above-entitled action, is
hereby expressly waived.

Dated August 21, 1913.

IRA A. CAMPBELL,
Attorney for Petitioners and Plaintiffs.

B. L. McKINLEY,
United States Attorney.

By T. H. SELVAGE,
Asst.

[Endorsed]: Filed Aug. 21, 1913. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [34]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Corpora-
tion, E. T. KRUSE, MARY BELL PARKER
BURNS, CECELIA SUDDEN, JAMES
HOGG, JAMES P. TAYLOR and KATE E.
SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondents.

Findings of Fact.

The Court finds in the above-entitled case that all the facts admitted by the pleadings and the agreed statement of facts are true and in addition thereto finds:

1. That the steamship "Homer" was fully discharged of her cargo and turned over to the owners by the charterers on or prior to the 12th day of September, 1911, at the port of San Francisco, California.

2. That W. I. Lembkey did not have authority to extend the charter-party beyond the 12th day of September, 1911, and his attempted extension thereof was not ratified or approved by the Department of Commerce and Labor or by any Department or agent of the defendant.

3. That there was no contract or agreement be-

tween the plaintiffs and the defendant extending the charter-party beyond September 12, 1911. [35]

Conclusions of Law.

From the foregoing the Court concludes as follows:

First. That the plaintiffs are entitled to judgment upon the first count of the complaint for the sum of one thousand four hundred and sixty-two and 75/100 (1,462.75) dollars with interest thereon at the rate of seven per cent per annum from September 12, 1911.

Second. That respondent is entitled to judgment, that the plaintiffs take nothing on the second count of the complaint.

Let judgment be entered accordingly.

San Francisco, Cal.

Dated November 5th, 1915.

WM. C. VAN FLEET,
Judge of said Court.

[Endorsed]: Filed Nov. 5, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [36]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Corpora-
tion, E. T. KRUSE, MARY BELL PARKER
BURNS, CECELIA SUDDEN, JAMES
HOGG, JAMES P. TAYLOR and KATE E.
SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondent.

Judgment.

This cause came on regularly for trial on Tuesday, the 11th day of May, 1915, being a day in the March, 1915, term of said District Court, before the Court, sitting without a jury, a jury having been duly waived in writing signed by counsel for both parties in the manner prescribed by law, Ira A. Campbell, Esq., appearing at attorney for the plaintiffs and M. A. Thomas, Esq., Assistant United States Attorney, appearing for the defendant; and the trial having been proceeded with; and evidence oral and documentary upon the behalf of the respective parties having been introduced and the agreed statement of facts stipulated to by the respective parties having been also introduced, and the cause having been submitted to the Court for hearing and determination after argument; and the Court having made and filed its findings of fact and conclusions of law, and having ordered that judgment be entered in accord-

ance with the said findings and conclusions;

NOW, THEREFORE, by reason of the law and by reason of the premises aforesaid, and by reason of the findings of fact and conclusions of law aforesaid, [37]

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, as follows:

1. That petitioners and plaintiffs herein, J. Homer Fritch, Incorporated, a corporation, E. T. Kruse, Mary Bell Parker Burns, Cecilia Sudden, James Hogg, James P. Taylor and Kate E. Spiers, have and recover of and from the United States, respondent herein, upon the cause of action set forth and contained in the first count of the petition or complaint on file herein, the sum of one thousand four hundred sixty-two and 75/100 (1,462.75) dollars, together with the sum of four hundred twenty and 90/100 (420.90) dollars, being interest thereon at the rate of seven (7) per cent per annum, from the 12th day of September, 1911, to the date hereof.

2. That said plaintiffs take nothing by the second count contained in the petition or complaint on file herein.

Judgment entered November 5, 1915.

W. B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

A true copy. Attest:

[Seal]

WALTER B. MALING,
Clerk.

By J. A. Schaertzer,
Deputy Clerk.

[Endorsed]: Filed Nov. 5, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [38]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Corpora-
tion, E. T. KRUSE, MARY BELL PARKER
BURNS, CECELIA SUDDEN, JAMES
HOGG, JAMES P. TAYLOR and KATE E.
SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondents.

Bill of Exceptions.

BE IT REMEMBERED that on the 11th day of
May, 1915, the above-entitled cause came on regu-
larly for trial before the Hon. William C. Van Fleet,
Judge of the above-entitled court, a jury having
been duly waived in the manner required by law,
in writing, Ira A. Campbell, Esq., and John F. Cas-
sell, Esq., appearing as attorneys for the plaintiffs
and petitioners, and M. A. Thomas, Esq., Assistant
United States Attorney, appearing for respondents;
and thereupon the following proceedings were had:

[Proceedings Had May 11, 1915.]

The agreed statement of facts on file herein was
thereupon read. Said agreed statement is hereby
referred to and made a part hereof, but is not cop-

ied into this bill of exceptions inasmuch as it is on file herein. [39*—1†]

Mr. THOMAS.—You admit that the original charter terminated on the 12th of September, 1911?

Mr. CASSELL.—We contend that the charter was extended.

The COURT.—You say in your petition that the steamer on her return was formally tendered to the owner?

Mr. CASSELL.—It was tendered to the owner by the captain.

The COURT.—Yes; he is the one in charge.

Mr. CASSELL.—But these telegrams had arrived prior to that time.

The COURT.—That is a different thing. You admit that she was formally tendered by the Government upon her return to the owners?

Mr. CASSELL.—Yes, sir. I will read a portion of the agreed statement. In our complaint we have only set out the provisions that are material here. The stipulation admits that the first count is correct. The agreed statement entitles the plaintiff to judgment in any event upon the first count in the sum of \$1,638.75, with interest from September 12, 1911. The remainder of the agreed statement of facts relates entirely to the second count. (Reads):

I will ask Mr. Thomas to stipulate that there appeared on the telegram referred to in this agreed statement of facts the time at which the telegram

*Page-number of Original Certified Transcript of Record.

†Original page-number of Bill of Exceptions as same appears in Original Certified Transcript of Record.

was sent from Washington, which was 10:07 A. M.

Mr. THOMAS.—That is all right.

Mr. CASSELL.—And the agreed statement will be deemed amended in that respect?

Mr. THOMAS.—Yes.

The COURT.—It seems to me that that agreed statement should state as to when the vessel was fully discharged of her [40—1-a] cargo and turned over to the owners.

Mr. THOMAS.—That was the point I raised a while ago. We had in our agreed statement of facts that clause, and it was inadvertently struck out. That is why I asked counsel if he would stipulate that the original charter terminated on the 12th day of September, and that the vessel was turned over by the captain at that time. That is the statement as we had it, Mr. Cassell.

Mr. CASSELL.—I never stipulated that the charter was terminated.

The COURT.—The cargo had been discharged and the vessel was turned over to the owners on the 12th of September.

Mr. CASSELL.—Before it was actually turned over this new arrangement had been entered into on this telegram.

The COURT.—I am not discussing that. I am talking about the physical fact. You said it was turned over; I believe it was taken over to Oakland Creek.

Mr. CASSELL.—At about 10:30 this telegram was received from Washington; at 12 o'clock noon the vessel was to be turned over; our people went

to the dock and the vessel was turned over to them, and they put somebody in charge for the Government as they believed.

The COURT.—That is a matter of law whether they put somebody in charge on behalf of the Government, or not; he is simply asking you to stipulate as to what the fact was. The Court will determine what the legal effect was.

Mr. CASSELL.—The cargo had been discharged.

The COURT.—The cargo had been discharged and the vessel had been tendered to the owners.

Mr. CASSELL.—I would hardly say that it had been tendered [41—1-b] to the owners.

The COURT.—But you have said so yourself. I am simply quoting what you stated. You said it was taken by the owner and put in the Oakland Creek for the Government.

Mr. CASSELL.—I simply did not want to convey the idea that the Government tendered it to the owners with the idea that the charter was terminated.

While the captain and the others were paid by the owners, they were really in the employ of the Government. If Mr. Fritch went to the dock at 12 o'clock, if the charter was extended the "Homer" was not placed in his charge at all; it was actually in the hands of men—

The COURT.—We are not talking about that; the vessel's cargo had been discharged, had it?

Mr. CASSELL.—Yes, sir.

The COURT.—And you had been notified that the vessel was ready for the owners?

Mr. CASSELL.—We had been notified that the cargo was discharged.

The COURT.—The other is a matter of legal effect.

Mr. THOMAS.—I think I can clear that up by reading from this paper—

Mr. CASSELL.—I don't care to have it read, Mr. Thomas.

The COURT.—What is it?

Mr. THOMAS.—(Reading:) “That prior to the 12th day of September, 1911, said SS. “Homer” docked alongside the long [42—1-c] wharf, on the Oakland shore in the Bay of San Francisco; that on or prior to said 12th day of September, 1911, the captain of said steamship notified plaintiff that the voyage of said SS. “Homer” was complete, that the cargo was discharged and that she was subject to the order of the plaintiffs.”

You will remember, Mr. Cassell, that I asked you to strike out from there down—from “Plaintiffs” down; I felt that that was the agreed statement of facts in that regard.

The COURT.—Well, was that the fact, in substance, that they had been notified.

Mr. CASSELL.—They had been notified that the voyage was terminated and that the cargo had been discharged.

The COURT.—That is all. I am not asking you to concede what the legal effect of it was. That is a matter for the Court to determine. [43—1-d]

[Testimony of John D. McKee, for Plaintiffs.]

JOHN D. McKEE, a witness called in behalf of plaintiffs, having been duly sworn, testified as follows:

The WITNESS.—I am vice-president of the Mercantile Trust Company of San Francisco, and president of the Mercantile National Bank, and held those offices during the year 1911. At that time the company known as J. Homer Fritch, Inc., was a debtor of the Mercantile Trust Company of San Francisco, and considerable control over the affairs of the Fritch Company was given to me in behalf of the Mercantile Trust Company of San Francisco. I knew at that time Mr. J. Homer Fritch, who was president of J. Homer Fritch, Inc. Mr. Fritch did not consult me about making the charter of the steamer “Homer” with the Government originally, but he did consult me about the extension. I knew that the “Homer” was chartered to the Government and had seen the charter and knew the terms of the charter. Whenever any steps concerning the chartering of the “Homer” were taken by Mr. Fritch I was consulted, and I was consulted as to practically all of the affairs of J. Homer Fritch, Inc. I have seen the telegram referred to in the agreed statement of facts in this case, from Charles Earl, acting secretary of J. Homer Fritch, Inc., dated September 12, 1911.

Mr. CASSELL.—Q. Mr. McKee, will you state when and where you first saw that telegram?

A. I am refreshing my mind now by looking at the date on the telegram; I saw it on the morning of the day that it was sent.

(Testimony of John D. McKee.)

Q. Sent by whom?

A. It was brought to me by Mr. Fritch. [44—2]

The COURT.—Q. You mean you saw it on the day that it was received here?

A. Yes, sir. I saw it on September 12, 1911. 1911. What I meant to say was that I am basing my statement on the date I see in the telegram before me; I have not any other means of recalling the date.

Mr. CASSELL.—Q. Where did you see it?

A. In my office.

Mr. CASSELL.—I offer this telegram in evidence.

Mr. THOMAS.—It is in the agreed statement of facts.

The COURT.—You had best identify it as the telegram of such and such a date and mentioned in the agreed statement.

Mr. CASSELL.—It will be stipulated that this telegram mentioned in the statement received from the Government by J. Homer Fritch Co., Inc., is this telegram.

Q. Who showed you that telegram?

A. Mr. Fritch.

Q. Was anyone else present at the time?

A. Yes, Mr. Lembkey.

Q. Do you remember anyone else being present?

A. I do not recall anyone else.

Q. That was in your office? A. Yes, sir.

Mr. CASSELL.—Q. Had Mr. Fritch been con-

(Testimony of John D. McKee.)

sulting you prior to that time concerning the affairs of the "Homer"?

A. Yes, sir.

Q. What was the situation of the "Homer," so far as you were concerned, at that time?

A. The Fritch interests in the "Homer" had been transferred to my name; the Fritch Company was ostensibly the managing owner and I was practically in control of the vessel, that is, of the Fritch interest in the vessel. [45—3]

Q. And that is the way he came to come to you?

A. Yes, sir.

Q. And it was desired both by you and by Mr. Fritch that the "Homer" should be sold to liquidate the debts of the company?

A. Mr. Fritch was very optimistic about the value of the boat and was sure the government would exercise the option and did not want the boat sold to anybody else. I wanted the boat sold as quickly as possible to liquidate the business.

Q. Did you at that time have any negotiations pending for the sale of the boat to somebody other than the Government if the Government did not make the purchase? A. Yes, sir.

Q. Were you yourself conducting negotiations looking to the sale of the "Homer" to someone other than to the Government if the Government did not purchase? A. Yes, sir.

Q. And did Mr. Fritch know that to be the fact?

A. Yes, sir.

Q. What took place at that meeting between your-

(Testimony of John D. McKee.)

self and Mr. Lembkey and Mr. Fritch on the occasion when Mr. Fritch showed you this telegram?

The COURT.—Who was Mr. Lembkey?

Mr. CASSELL.—He was the agent of the Department of Commerce and Labor for the control of the Seals Fisheries. That is a statutory position.

A. I met Mr. Lembkey for the first time that morning. Mr. Fritch brought him in to satisfy me that the arrangement would be consummated, that it was all right. I questioned [46—4] Lembkey about the telegram which they showed him and asked him what authority Mr. Earl had. Lembkey stated that Earl had an important position and stood high in the Department, and that any telegram like that was amply satisfactory, that I need not worry at all about that. I asked who the parties were who had executed the charter previously and was informed that Mr. Lembkey had executed it as the agent for the Seals Fisheries, or whatever it is; I then told Mr. Fritch that he should have Lembkey indorse an addition to the charter, indorse an extension on the bottom of the original charter. The charter was not in my possession; that was in Mr. Fritch's office as he was the managing owner. I had many of the other papers concerning the business of Fritch in the bank. I might state, Judge, that probably a year prior to this the Fritch company had gotten into financial difficulties and we had taken one of the young men of the bank and put him in charge of the Fritch business and Mr. Fritch was then representing his mother's interests, and we

(Testimony of John D. McKee.)

were then practically liquidating it.

Q. I will show you the last page of the charter-party, which is set forth in the agreed statement of facts, and ask you if you have seen that endorsement thereon, the endorsement at the foot of the page there.

A. I saw this charter-party before the endorsement was made and I saw it after the endorsement was made, but I did not see the endorsement made. That was made in some other office.

Q. Is that the endorsement you mentioned as having suggested that Mr. Lembkey should place upon that instrument?

A. Yes, I recommended that it be signed exactly as the original charter was signed. [47—5]

Q. Did Mr. Lembkey state, in your presence and in the presence of Mr. Fritch at that time, what he believed the reason of the Government to be for wanting the charter extended a period of 30 days?

A. Yes, sir.

Q. State what that was.

Mr. THOMAS.—I object to that, if your Honor please; it is not shown that any statement Mr. Lembkey would make would be binding upon the Government in this matter.

The COURT.—No, I think not. You have shown what took place, you cannot show the conversation.

Mr. CASSELL.—There is a deposition on file by Mr. Fritch. He is very sick; we took his deposition in place of bringing him here. In that deposition all of the correspondence is put in between Mr. Fritch

(Testimony of John D. McKee.)

and the Department leading up to this charter, and we believe that it is material. I am at a disadvantage in not having that before the Court, because I think it does show the materiality of the question I have just asked. I am going to take the liberty of reading just one portion of a letter to you, a letter dated December 2d. This correspondence is quite lengthy. This boat had been chartered by the Government every year for five or six years before. It was a peculiar boat. It was peculiarly adaptable to this work of the Government. Mr. Lembkey was anxious that the boat should be purchased by the Government. During the fall of 1910 there had been many negotiations between the Department and Mr. Fritch looking toward the purchase of the "Homer." It finally became apparent that the Government was not going to have sufficient funds available for the purchase of the "Homer" and they became desirous of extending the charter and putting in a clause of the character we have in clause 21 of the charter, whereby the Department [48—6] would be enabled to pay a portion of the purchase price and bring that amount up to an amount where the Department would have a fund available to pay on the balance of the purchase price. I will read one letter sent by Lembkey, writing for Mr. Bowers. This is the letter. (Reads Plaintiffs Exhibit No. 5.)

The COURT.—Your contract here is in writing; you can show what the situation was. Conversations and negotiations are not admissible here.

(Testimony of John D. McKee.)

Mr. CASSELL.—Unless your Honor is prepared to hold as a matter of law that the telegrams exclude the possibility of an extension of the charter, we think this is material.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 1.

Mr. CASSELL.—If your Honor please, I offer to prove by Mr. McKee that at that meeting Mr. Lembkey stated that it was his belief that the Government desired to extend the charter for 30 days and that one of its purposes for so doing was to bring the balance due under the contract under the charter-party down to an amount which the Government had available for the purchase of the "Homer."

The COURT.—Well, proceed; there is no objection.

Mr. THOMAS.—I will wait until he asks the questions. I thought your Honor had ruled.

Mr. CASSELL.—I had made an offer to prove.
[49—7]

The COURT.—We do not rule on offers to prove; we rule on objections to questions.

Mr. CASSELL.—Q. Will you state what was said by Mr. Lembkey at that time with regard to the purpose of the Department in desiring to extend the charter-party for 30 days.

Mr. THOMAS.—We object to that, if your Honor please, upon the ground that the charter-party shows on its face that anything Lembkey did was subject

(Testimony of John D. McKee.)

to the approval of the Department, and that Lembkey's private conversations with these gentlemen or his statements to them are in no way binding upon the Government.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 2.

Mr. CASSELL.—Q. Will you state what was the nature of the negotiations you then had pending for the sale of the "Homer" to other parties in the event that the sale to the Government did not go through in accordance with the terms of the provisions of clause 21 of the charter-party.

Mr. THOMAS.—We object to the question, if your Honor please, upon the ground that the answer would be immaterial, irrelevant and incompetent, and it would have no bearing at all on this case.

The COURT.—He has stated that there were negotiations and that is all that is material; the specific nature of them is not material. The objection is sustained. The fact is, Mr. Cassell, [50—8] I do not think it is material whether he had other negotiations. He had a right to want to sell the vessel to the Government, whether he had other people seeking it, or not.

Mr. CASSELL.—I do not desire to offer anything further in face of your Honor's ruling, but I want to show that the parties were acting in absolutely good faith, and that they actually did have prospects of selling the vessel.

(Testimony of John D. McKee.)

The COURT.—You don't have to show good faith in that regard.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 3.

Mr. CASSELL.—Q. Mr. McKee, I will show you a contract dated September 5, 1911, signed by yourself and Mr. W. S. Scammell, and I will ask you if that contract was made by yourself and Mr. Scammell on that date.

Mr. THOMAS.—If the Court please, I desire to object to any testimony concerning this contract as it does not appear to be within the issues—it does not purport to be a contract between the United States and the plaintiff here, and that it is immaterial, irrelevant and incompetent.

Mr. CASSELL.—This purports to be a contract between Mr. McKee and Mr. Scammell whereby Mr. Scammell was to purchase the "Homer" at a stated price. The contract contains this provision: 'If and when the charter on the steamer "Homer," in favor of the United States Government, shall terminate, which is [51—9] expected to be about 30 days from this date, and if the United States Government does not exercise its option to purchase said steamship "Homer," then the interest of the undersigned in the steamship "Homer" is sold and assigned to said Scammell at the rate of \$35,000 for the entire interest in the vessel.'

The Court thereupon sustained respondents' said

(Testimony of John D. McKee.)

objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 4.

Mr. CASSELL.—I will offer this as “Plaintiffs' Exhibit No. 1 for Identification.” The said contract was thereupon marked Plaintiffs' Exhibit No. 1 for Identification and was in the words and figures following:

**[Plaintiffs' Exhibit No. 1 for Identification—
Memorandum, Dated September 15, 1911.]**

San Francisco, California, September 15, 1911.

Receipt is acknowledged by the undersigned from Mr. Walter S. Scammell of the sum of One Thousand (\$1000) Dollars, being payment on account of the purchase of the SS. “Homer” upon the following conditions:

If and when the charter now in force upon the SS. “Homer” in favor of the U. S. Government, which charter contains an option in favor of the U. S. Government to purchase the SS. “Homer,” shall terminate (which is expected to be about [52—10] thirty days from this date), and if the U. S. Government does not exercise its option to purchase the said SS. “Homer,” then the interest of the undersigned in the said SS. “Homer” is to be sold, assigned and transferred to the said Walter S. Scammell upon payment therefor at the rate of thirty-five thousand (\$35,000) dollars for the entire vessel, as follows:

Cash upon delivery of Bill of Sale, eight thousand (\$8,000) dollars, (including the deposit of \$1,000,

herein acknowledged) the balance in five equal notes payable to the order of the undersigned, six, twelve, eighteen, twenty-four and thirty months from date of transfer, bearing interest at six per cent. per annum, secured by first mortgage upon the said interest in the said SS. "Homer"; the maker and form of the said mortgage to be mutually satisfactory to the said Scammell and the undersigned.

If the U. S. Government exercises its option to purchase the said SS. "Homer," the above deposit of \$1000 is to be returned upon the order of the said Scammell.

If the option to purchase the said SS. "Homer" is not exercised by the U. S. Government, and the purchase of the said SS. "Homer" is not completed by the said Scammell (upon the conditions above set forth) within fifteen days after notice to him by the undersigned that the option of the U. S. Government [53—11] has not been exercised, then and in that event the above-mentioned deposit of \$1000 shall be forfeited to the undersigned.

The interest of the undersigned in the said SS. "Homer" to be transferred free and clear of all liens or indebtedness.

Insurance premium to be prorated.

Time is of the essence of this memorandum.

(Signed) JOHN D. McKEE.

Approved by:

W. S. SCAMMELL.

Witness:

W. J. WOODSIDE. [54—12]

Mr. CASSELL.—Q. Will you state when you first heard that the Government had declined to recognize the extension of the charter, the alleged extension of the charter, contained in the telegrams we have referred to?

Mr. THOMAS.—We object to this as immaterial.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 5.

Mr. CASSELL.—Q. Was it the belief of yourself, at that meeting and at all times thereafter during the months of September and October, 1911, that that charter had been extended by those telegrams?

Mr. THOMAS.—I desire to object to that question, your Honor, upon the ground that the belief of Mr. McKee is in nowise binding upon the defendant.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 6.

[Deposition of J. Homer Fritch, for Plaintiffs.]

The deposition of J. Homer Fritch, a witness on behalf of plaintiffs was thereupon read, said deposition having been taken by stipulation entered into between the parties and having been duly returned and filed herein.

The WITNESS.—I was the manager and president of J. Homer Fritch, Inc., during practically all of the time of its existence,— [55—13] ever since

(Deposition of J. Homer Fritch.)

1906. As manager of said corporation I had the management of the steamer "Homer." The steamer "Homer" was under charter to the United States Government prior to 1911, particularly to the Seal Fisheries of the Department of Commerce and Labor. It had been under charter to the Government for a number of years prior to 1911 and had been used by the department for the purpose of carrying supplies to the Pribilof Islands and bringing back skins from those islands. It was used each year by the Department from three to four months, generally the months of June, July, August, and a portion of the month of September.

Q. Who represented the Department in chartering the vessel from you?

A. Well, it was the officers of the Department; there was a number of them.

Q. Can you name some of them?

A. Yes. There was Lembkey; there was one that was the head of the Department; he was one of the principal ones.

Q. Did you have any dealings with Mr. Bowers?

A. Bowers,—yes.

Q. What were his initials, do you recall?

A. Bowers? No.

Q. George M. Bowers, was it?

A. George M. Bowers.

Q. How long prior to 1911 had you been dealing with Mr. Bowers?

A. I don't know—two or three years.

Q. How long had you known Mr. W. I. Lembkey prior to 1911?

(Deposition of J. Homer Fritch)

A. Prior to 1911, possibly—oh, let's see; I knew him first—I went on the steamer with him in 1898.

[56—14]

Q. 1898? A. Yes.

Q. And had you known him continuously since that time? A. Yes; met him every year since.

Q. How long had he been connected with the Department of Commerce and Labor prior to 1911?

A. Prior to 1911?

Q. Yes.

A. About, I think, eighteen to twenty years.

Q. Had you communicated with him concerning the charter of the steamship "Homer" each year?

A. No—oh, yes—well, no, not each year.

Q. On many different occasions?

A. Oh, yes; frequently. He was the principal business man.

Q. He was the agent of the Seal Fisheries?

A. He was the agent of the Seal Fisheries and all the actual business was done with him, except the chartering of the charter-party and that was frequently done by him.

Q. He made all the preliminary arrangements, did he not? A. Yes.

Q. Had any negotiations between you representing the owners of the steamship "Homer" on the one hand and Mr. Lembkey representing the Department of Commerce and Labor on the other hand been carried on looking toward the purchase of the steamer "Homer" prior to 1911?

A. Prior to 1911?

(Deposition of J. Homer Fritch.)

Q. Yes. A. There had been some talk of it.

Mr. CASSELL.—Q. How long prior to 1911 had there been talk of the Government purchasing the “Homer”? A. Oh, some few years. [57—15]

Q. What was the reason, if you know, for the Government desiring the “Homer”?

A. Because she seemed to be about adapted for their use; she seemed to be well adapted for their use.

Q. Who had charge as captain of the “Homer”?

A. Captain Donaldson.

Q. Was he a man experienced in those waters?

A. Yes.

Q. Had the Government made any prior offers looking toward the purchase of the “Homer” prior to 1911?

A. No. There had been more or less talk *about every* year; there was some talk of purchase.

Q. During what months of each year did the Government ordinarily charter the “Homer”?

A. June, July, August and September.

Q. And what period of each year did you ordinarily enter into negotiations looking toward the charter for the next year? A. Usually during the fall.

Q. During the fall of 1910 did you enter into negotiations with the Department either through Mr. Lembkey or Mr. Bowers, or any official of the Department, looking toward the charter of the “Homer” for the year 1911? A. Yes.

Q. Did you have any correspondence with either of those gentlemen or any officials of the Department?

(Deposition of J. Homer Fritch.)

A. Yes,—a number of gentlemen there; I don't remember exactly whom.

Q. Did you have correspondence of that character at that time with Mr. Lembkey?

A. Yes. [58—16]

Q. And Mr. Bowers? A. Yes.

Q. And with other officials of the Department?

A. Yes.

Q. In that correspondence did you deal with the question of chartering the "Homer" for the year 1911? A. Yes.

Q. And also did that correspondence deal with the subject of the possible purchase of the "Homer" by the Department? A. Yes.

Fourteen letters and nine telegrams were thereupon produced and it was stipulated that said letters and telegrams constituted the correspondence referred to in the witness' testimony, and that the copies offered were true and correct, and that said letters and telegrams were actually sent, at the respective dates which they bore, by the parties signing them, and that they were received in due course by the parties to whom they were respectively addressed. All of said letters and telegrams antedated the charter-party of April 24, 1911. Said letters and telegrams were thereupon offered in evidence by plaintiffs for the purpose of explaining any ambiguity that might be said to exist in the charter-party, or in any clause thereof, or in the agreement arrived at, bearing on the alleged extension of the charter-party.

(Deposition of J. Homer Fritch.)

Counsel for respondents thereupon objected to the admission of said correspondence, or any part thereof, upon the ground that the same was incompetent, irrelevant and immaterial, and upon the ground that all negotiations with reference to the chartering of the "Homer" were merged in the charter-party of April 24, 1911. The Court thereupon overruled said objection and admitted the following letters and telegrams in evidence: [59—17]

**Petitioners' and Plaintiffs' Exhibit No. 2 [Letter,
November 1, 1910, Fritch to Lembkey].**

November 1, 1910.

Mr. W. I. Lembkey,
Dept. of Commerce & Labor,
Washington, D. C.

Dear Lembkey:

Referring steamer "Homer" I have been thinking over this matter considerably within the last month and I have made up my mind that I will inform you and Mr. Bowers of the exact condition of things here so that you can make your arrangements accordingly and at the same time let me know what your intentions are in regard to the matter. In the first place ever since returning from Alaska I have had her under daily charter to the Pacific Coast Steamship Company and the ship is making good, in fact she has exceeded their expectations both in the amount of business offered and the amount of cargo carried and I have no doubt that she is making good money for them. They have been after me continually to tie the ship up to them for a year.

This, up to the present time, I have absolutely refused to do, but I have signed a Charter to extend until the first of March. I now have two or three of the different Iron Works in San Francisco figuring on installing a new boiler. This can be done during the month of March without any trouble providing, of course, that I place the order for this boiler forthwith.

I have always desired to do your business, preferably to sell the ship to the Government and work out the business on the lines talked of before you left, in regard to Captain, [60—18] etc., and this can be carried out provided the Government should see fit to purchase the steamer.

Of course, if the contract is made for the new boiler I should expect this contract to be assumed by the Government, providing they decide to purchase. Should the matter of purchase fall through, it is then up to the question of charter. The business that the "Homer" is at present engaged in, while it is profitable during the winter months it would be extra good during the summer months and as the Pacific Coast Steamship Company's *principle* business would be in the summer they naturally wish to tie this ship up so that they would have the use of her during the summer. On my part I am very anxious to place the ship in such a way that she can make money enough to pay for the installing of the new boiler. I hope I have made everything clear to you and that you will readily see my position in the matter. I wish to do the best I possibly can for the ship and owners and at the same

time I want to treat fair and square with your people in every respect.

Kindly confer with Mr. Bowers in regard to the matter and let me know your ideas so that I may act accordingly.

With very best wishes to your good self, Mrs. Lembkey, Mrs. Bowers and Mrs. Judge,

I remain,

Very truly yours,
J. HOMER FRITCH. [61—19]

**Petitioners' and Plaintiffs' Exhibit No. 3 [Letter,
November 12, 1910, Commissioner Bowers to
Fritch.]**

DEPARTMENT OF COMMERCE AND LABOR,
Bureau of Fisheries,
Washington.

November 12, 1910.

Mr. J. Homer Fritch,
Fife Building,
San Francisco, Calif.

Sir:

Replying to your letter of the 1st instant, with reference to the charter or sale of the "Homer" to the Government for use of the Seal Islands, you are requested, as a preliminary to the consideration of the question, to state the lowest price at which the "Homer" might be chartered for the summer; also, the lowest cash price at which she might be purchased outright. The charter price quoted should be predicated upon the installation of a new boiler and a square-sail for the foremast before the season of 1911 begins.

Please state also your idea of the cost of a new boiler and installation of the same.

Respectfully,

(Signed) GEORGE A. BOWERS,

Commissioner. [62—20]

**Petitioners' and Plaintiffs' Exhibit No. 4 [Letter,
November 23, 1910, Fritch to Bowers].**

November 23, 1910.

George M. Bowers,

Bureau of Fisheries,

Dept. of Commerce & Labor,

Washington, D. C.

Dear Mr. Bowers:

I beg to acknowledge receipt of your favor of November 12th, 1910, and in answer to the same I will say, the new boiler installed in the steamer "Homer" will cost about \$6,500.00. The United Engineering Works of San Francisco have agreed to supply a boiler identical with the one that the "Homer" has and with ample capacity to generate enough steam to do all the work necessary on board the ship; that is to say, they will take the old boiler out and replace the new one with all necessary fittings, piping, etc., and the same to pass inspection by the United States Inspectors of hulls and boilers for a lump sum of \$6,500.00 and will agree to do the work within thirty days after the ship is turned over to them. I wish to explain in detail my position in regard to the vessel so that you may know exactly how to act in the premises. As I informed you before the ship is under charter, at the present time, to the Pacific Coast Steamship Company until

the 1st of March, 1911. The Pacific Coast Steamship Company are very anxious to close a further charter with me extending over a period of one year, as they contend and very justly too, that if they use the ship through the winter and work up a business for her they [63—21] are very anxious to keep her through the summer, which is their busiest time. Furthermore, there are some parties here and in Seattle who also wish to charter the vessel for the season for the Kuskokwim River for the summer.

Personally I must say that I lean to the Government business, particularly as I have done the business of the Seal Islands so long and it has always been very satisfactory in every way. I should much prefer to make a sale of the ship outright and with this object in view I am perfectly willing to agree to deliver the ship to the Government with a new boiler installed, new *propellers*, and in thoroughly good sea-going condition, including square sale for the sum of \$43,500.00 net. Furthermore I will also agree to allow Captain Donaldson to take the ship during your season each year while he is in my employ. I have talked with him in regard to this matter and I have agreed to place a man in charge of the Steamer "Carlos" each year while he is away on your business. I will further agree to attend to your business here, giving you the use of my offices, clerks, stenographers, telephones, etc. under an agreement for a small consideration for disbursements, etc. the agreement being that there shall be no rent charged, if the present offices are

large enough to accomodate the business, which I think they are, should you desire to charter. The prospects for the coming summer are that we will be short on tonnage and in fact there is a very active market on tonnage at the present time in San Francisco. I have received several very flattering offers, however, I will be perfectly willing to charter to your people under the same conditions as last year at a daily rental of \$160.00 per day. [64—22]

I consider the new boiler will save the difference in rental between this price and last year's price in the consumption of coal, to say nothing of the *increase* sufficiency of the ship. You will greatly oblige me if you will give this matter your immediate consideration, as I am holding the other propositions up until such time as you shall indicate what you propose doing for futures.

You will understand friend Bowers that I am trying to do what I consider for the best interests of the Steamer "Homer," and her owners. At the same time, as I have said before, I am anxious to do your business and I sincerely hope that you will see your way clear to purchase the ship outright. With a new boiler, and the thorough overhauling which I propose to give her, you no doubt would have a good ship and one which has proven to be just about what you want to do your business.

With best wishes to yourself, Mr. Lembkey and Mr. Judge and hoping to get an early reply.

I remain,
yours Very truly,
J. HOMER FRITCH.

**Petitioners' and Plaintiffs' Exhibit No. 5 [Letter,
December 2, 1910, Lembkey to Fritch].**

DEPARTMENT OF COMMERCE AND LABOR.

Bureau of Fisheries.

Washington.

Personal.

December 2, 1910.

My dear Mr. Fritch. [65—23]

Your letter of November 23, regarding the purchase of the "Homer" is to hand. The Commissioner wished me to write you a personal letter about the matter.

The Commissioner desires to purchase the "Homer." The terms of purchase, however, require some adjustment. The situation is about as follows, and, as a business man, you will readily grasp it:

The appropriation, of which we have an unexpended balance this year and from which the purchase of the vessel was contemplated, has been decided to be not available for purchase of a vessel, although it can be used for chartering. We have, however, another appropriation of \$20,000, which can be used for purchase outright of a vessel for Alaska. The object, therefore, if a vessel should be purchased, is to pay the \$20,000 down as part payment of the purchase money, and to have the balance of the latter paid as charter money from the other appropriation.

If we were to charter the "Homer" this spring, therefore, it would be on the understanding that the charter money so paid should apply on the purchase

price. Then we could prolong the charter, perhaps, by laying her up in the Creek or by some other arrangement, until the charter money would reach an amount equal to the balance of the purchase price.

It is not good policy to have the charter-rate greater than it was last season (\$142.50). We would also like to be assured of the efficiency of the new boiler before installation. The question of price and terms would have to be discussed. I am giving you, however, a statement of the exact situation regarding funds and our limitations regarding them, and [66—24] invite an early expression of your views on the question whether an understanding could be reached on the basis outlined. Let me have any suggestions you may wish to offer regarding an arrangement.

The Commissioner leaves tonight for Europe. He sends his regards, as do all of us. We are all wearing "1915" buttons and rooting for San Francisco.

Very truly yours,

(Signed) W. I. LEMBKEY.

Mr. J. Homer Fritch,

Fife Building,

San Francisco, Calif.

**Petitioners' and Plaintiffs' Exhibit No. 6 [Letter,
December 8, 1910, Fritch to Lembkey].**

December 8, 1910.

Mr. W. I. Lembkey,
Dep't. of Commerce & Labor,
Bureau of Fisheries,
Washington, D. C.

Dear Mr. Lembkey:

I beg to acknowledge receipt of your favor of December 2d and in answer will say that I look favorably upon your proposition and that I have no doubt that we can come to terms on the lines indicated by your communication. This is merely a matter of arranging the details as to the daily rental of the ship. That matter can be adjusted perfectly satisfactory, as it would not make any particular difference as to the amount per day, provided the money was to be [67—25] applied as you suggest. As I understand your proposition you are willing to pay the \$20,000.00, cash. The balance of the money to be paid in the way of rental year by year. This will be perfectly satisfactory to me. As to the matter of details I would like you to indicate how you would want this done. I would suggest a out and out Bill of Sale upon making the first payment. The balance of purchase money to be secured by a mortgage on the ship or if you did not wish to do it in this way, it might be done by making the payment of \$20,000.00 and an agreement for a Bill of Sale upon the final payment. Ship to be insured in favor of both parties to secure interests as they may ap-

pear. On the strength of your communication to me, I will proceed at once to order the boiler and make all arrangements to have the vessel ready for your business by the first of May, 1911.

Any further suggestions or recommendations that you can make in reference to the matter will be duly appreciated.

In sending communications in regard to this matter, will you kindly mark all envelopes personal, so that the whole matter will come direct to me.

Very truly yours,

J. HOMER FRITCH.

**Petitioners' and Plaintiffs' Exhibit No. 7 [Letter,
December 15, 1910, Lembkey to Fritch].**

DEPARTMENT OF COMMERCE AND LABOR,
Bureau of Fisheries.

Personal. December 15, 1910, Washington,
[68—26]

My dear Mr. Fritch:

I beg to acknowledge the receipt yesterday of your letter of the 8th instant, in which you state that the idea conveyed in my personal letter of the 2d instant, regarding the purchase of the "Homer," is favorably received.

I must state frankly that, at first, I partially misunderstood the Commissioner's idea regarding the arrangements for purchase. It is his desire to make a charter in the usual way as though the question of sale were not under discussion; to allow the charter-money to accrue to an amount equal to the purchase price, less \$20,000; and then, being in a position to state that he virtually could buy the ship for

68 *J. Homer Fritch, Incorporated, et al.*

\$20,000, he would proceed to do so. This is the same proposition as contained in my former letter, except that the payment of the \$20,000 occurs at the latter end of the transaction instead of at the beginning. I hope this will make no difference in your calculations.

If I had the opportunity of speaking to you personally, I would be able more readily to explain the situation and to discuss price and terms. However, let me know how you regard the foregoing proposition.

Very truly yours,

(Signed) W. I. LEMBKEY.

Mr. J. Homer Fritch,

San Francisco, Calif. [69—27]

**Petitioners' and Plaintiffs' Exhibit No. 8 [Letter,
January 3, 1911, Fritch to Lembkey].**

January 3, 1911.

Mr. W. I. Lembkey.

c/o Commissioner of Fisheries.

Dep't. of Commerce & Labor.

Washington, D. C.

My dear Mr. Lembkey:

I beg to acknowledge receipt of your favor of December 15th and in answer will say, the proposition as indicated in your communication of the 15th is entirely different from the one made on December 2nd and this would necessitate an entirely new mode of procedure. How would a proposition be for a Charter by the year, a certain amount payable monthly, to commence at once, making different prices, while laid up and while in commission with

full new crew on board, suit you?

Suppose for instance that you would take the Ship now or as soon as these arrangements could be entered into at a net price of \$38,000.00, payable as follows: Charter money to commence at once at the rate of \$100.00 per day while laid up and \$142.50 per day while running. All expenses of wages, provisions, etc. to be deducted from these amounts and the net amount to be applied on account of purchase price. You to pay for the new boiler and any other repairs that you may wish done. The balance or last payment of \$20,000.00 to be made when the Ship has earned \$18,000.00 together with the money spent for repairs and interest on deferred payment and insurance. It seems to that an agreement on these lines [70—28] can be formulated, whereby we can cover both ends. The larger the amount paid as rental the sooner you could take the Ship over and possibly you would wish to increase the amount while laid up. That is to say, suppose we made the Charter at once at an agreed sum of say \$142.50 for say a period of two or three years, with an understanding that when she had earned \$18,000.00 as outlined above this amount to be clear of all expense of maintenance, insurance, interest, etc., you then to pay \$20,000.00 for the ship.

Kindly take this matter up with Mr. Bowers and give me your ideas of how that would suit you. Kindly let me know about this matter as soon as possible as there are a number of parties talking purchase and Charter. I now have a proposition from some Alaska parties for a Charter for the

Summer, whereby the Ship can earn \$18,000.00 outside of interest and insurance, but it is a bad place to go and I have no doubt the insurance, if insurable at all, will be very heavy. If I can make a satisfactory arrangement with you, I prefer to do business with your Department with a prospect of taking up some other matters that may be a benefit to both, and again, if we can close a deal, I will be in touch with the Department for some little time and should anything occur whereby my services should be wanted I will be in a position to avail myself of any proposition you should wish to present.

With best wishes to Mr. Bowers, Mr. Judge and your good self and wishing you all the compliments of the season,

I remain,

Very truly yours,

J. HOMER FRITCH. [71—29]

**Petitioners' and Plaintiffs' Exhibit No. 9 [Letter,
January 12, 1911, Fritch to Lembkey].**

January, 12, 1911.

Mr. W. I. Lembkey,

c/o Commissioner of Fisheries,

Dep't. of Commerce & Labor,

Washington, D. C.

Dear Lembkey:

I wrote you a letter some little time ago in reference to the "Homer," but it is a little early yet to expect a reply. However, I wish you would take the matter up with Mr. Bowers and let me know your decision just as soon as possible. In connection with this matter there was a proposition that

came up yesterday from Captain Cottell of the Whalers, "Belvedere" and "Karlock." He will have from 500 to 1,000 barrels of whale oil in Dutch Harbor by the middle of June and he is very anxious to have that brought to San Francisco. As to the day of its arrival in Dutch Harbor he can arrange that, so as to fit in with your schedule up there, should you decide that you wish to take the oil. He will guarantee at least 500 barrels, or will pay \$500 freight unless he does not supply the 500 barrels. All over this amount is to pay \$1.00 per barrel, and he thinks he will have at least 800 to 1,000 barrels. The Steamer to use her winch in loading the same and Captain Cottell to supply the labor for stowing the same in the Ship's hold. This, I figure, would be fairly good freight as it handles quickly. However, this is a matter which I wish to bring to your attention as it may cut some figure in your calculations with the Steamer. [72—30]

The chances are there may be some other South bound freight we could pick up if we should so desire, all of which would help to pay the expenses of the vessel.

With best wishes to you all and hoping you can see your way clearly to accept my last proposition.

I remain,

Very truly yours,

J. HOMER FRITCH.

**Petitioners' and Plaintiffs Exhibit No. 11 [Letter,
January 30, 1911, Lembkey to Fritch].**

DEPARTMENT OF COMMERCE AND LABOR.

Bureau of Fisheries,
Washington.

January 30, 1911.

My dear Mr. Fritch:

I have delayed answering your last two letters until I could learn something definite in relation to the matter of the "Homer."

From what I can see at present, and without going into detail, I can say regretfully that there is little chance of purchasing the "Homer" until at least after July 1, next. This arises mainly from questions raised as to the propriety of the use for that purpose of some of the funds mentioned in my previous letters. It is a fact, however, that we will charter the "Homer," if the charter can be arranged to suit.

The main point in the matter, however, is the installation of the boiler. You will have to do that in time for the vessel to sail on June 1 proximo. While it will necessitate [73—31] the outlay of funds, it will increase the value of the ship and will return in purchase money.

The terms of the charter, etc., can be discussed later. My object in writing now is to ask you to go ahead with the boiler. With that done, we can use the vessel under charter, which we could not do without it.

Mr. Bowers is still in Europe and the date of

his return is not known. His lengthy stay is understood to be due to ill-health. I saw Mr. Davis the other day at the Willard.

With my kindest regards I am, believe me,

Sincerely yours,

(Signed) W. I. LEMBKEY.

**Petitioners' and Plaintiffs' Exhibit No. 12 [Letter,
February 4, 1911, Fritch to Lembkey].**

February 4, 1911.

Mr. W. I. Lembkey,

Dep't. of Commerce & Labor,

Washington, D. C.

Dear Mr. Lembkey:

I beg to acknowledge receipt of your favor of January 30th and in answer will say that I am very much disappointed at what you say in regard to the purchase of the Steamer "Homer." However, I have ordered the boiler and the boiler will be installed and the Ship ready for sea by the middle of May. Some two weeks ago, James McMillen came into the office and informed me that he was going on to Washington with a view that he was going to try and get the position of Government Representative in San Francisco. He also [74—32] desired that I should make a price to him on the Stmr. "Homer" for Charter to the Government. He told me that he had been looking up the Steamer "Grace Dollar" and also the "Phoenix." A day or two ago I met the owner of the "Phoenix" and he told me that Mr. McMillen had been there to see him with some representative from your Department. He did not know the

gentleman's name but he claimed to have the power to charter the vessel and he had looked over the "Phoenix" with Mr. McMillen and he said that he was prepared to do business. I thought this proceeding very strange, in view of the fact that I had been negotiating with your people and on the strength of these negotiations I had turned down several other propositions for charter of the "Homer," particularly, the one to the Kuskokwim Commercial Co. This proposition would have been, no doubt, a good one as I refused a six months Charter, to commence about May 15th at a daily rental of \$160.00 per day, Government form. I naturally came to the conclusion that the whole business as far as McMillen was concerned was of Jimmie looking for a little commission from this end. However, I am leaving this matter all in your hands and if there is any prospect of the Government not requiring the "Homer" I wish you would inform me as there are other opportunities offering and I do not care to leave the matter in a uncertain condition. She is at present under charter to the Pacific Coast Co., this charter to end April 15th. That will give me a full month in order to get the vessel in condition for your business. I hope the Department will not leave me in the lurch on this proposition, as I have held the vessel out [75—35] for you and it would not be right to have something turn up whereby I should lose the outside opportunities for other business.

I am very sorry to hear that Mr. Bowers is so indisposed and I sincerely hope that he will be im-

proved before I hear from you again. I sent you a little telegram on January 30th, hope you received it all right.

* * * * *

With best wishes, to you all,

I remain,

Very truly yours,

J. HOMER FRITCH,

Petitioners' and Plaintiffs' Exhibit No. 14 [Telegram, March 8, 1911, Commissioner to Fritch].

(Telegram—Postal Telegraph—Commercial Cables.)

513-Ch. Wx. 40-Govt.

Washington, D. C. Mar. 8, 1911.

J. Homer Fritsch,

Fife Bldg., San Francisco, Cal.

Provided new boiler installed by May fifteen will charter Homer for one Hundred forty two fifty per day with option to buy applying charter money on purchase price. Wire answer.

COMMISSIONER OF FISHERIES.

Petitioners' and Plaintiffs' Exhibit No. 15 [Telegram, March 8, 1911, Fritch to Commissioner].

(Postal Telegraph Commercial Cables Night Lettergram.)

San Francisco, March 8, 1911.

Commissioner of Fisheries,

Washington, D. C. [76—34]

Wire March 8th received. New boiler will be installed and ship ready for service May 15th. Will accept your proposition all terms and conditions of last years charter to remain the same and an added

76 *J. Homer Fritch, Incorporated, et al.*

option of purchase. The net charter money to apply on purchase price. Answer.

J. HOMER FRITCH.

Petitioners' and Plaintiffs' Exhibit No. 16
[Telegram, March 9, 1911—Commissioner to Fritch].

(Telegram — Postal-Telegraph — Commercial Cables.)

552 chs. 27 Govt.

Washington D C Mar. 9, 11.

J. Homer Fritch,

Fife Bldg Sanfran. Cal.

Your telegram eighth proposition to charter Homer accepted price at which vessel might be purchased to be determined later.

COMMISSIONER 135p.

Petitioners' and Plaintiffs' Exhibit No. 17
[Telegram, March 30, 1911—Commissioner to Fritch].

(Telegram — Postal Telegraph — Commercial Cables.)

303 chs. 51 Govt.

Washington D C Mar. 30-11.

J. Homer Fritch,

Fife Bldg Sanfran cal

Prepare sign and forward at once for approval six copies charter homer in accordance terms agreed upon in recent telegrams form and substance in other respects same as last years vessel to be delivered in seaworthy condition with new boiler may fifteen.

BOWERS COMMR. [77—35]

Petitioners' and Plaintiffs' Exhibit No. 20
[Telegram, April 6, 1911, Commissioner to
Fritch.]

(Telegram — Postal Telegraph — Commercial
Cables.)

515 CH. OD. 57 Govt.

Washington, D. C., Apr. 6, 1911,

J. Homer Frieth,

Fife Bldg.,

San Francisco, Calif.

Charters furnished by you for Homer not witness lack corporation seal. Also lack clause that charter money apply toward purchase. Prepare and mail immediately charters on form used last year namely time charter government form as agreed in your telegram March eight last answer.

GEORGE M. BOWER,
Commissioner of Fisheries.

Petitioners' and Plaintiffs' Exhibit No. 21
[Telegram, April 7, 1911, Commissioner to
Fritch.]

(Telegram — Postal Telegraph — Commercial
Cables.)

314-Ch. Wx. 21-Govt.

Washington, D. C., April 7, 1911.

J. Homer Fritch,

Fife Bldg., San Francisco, Cal.

Will prepare charter here accordance your telegram sixth and mail for your signature.

COMMISSIONER.

Petitioners' and Plaintiffs' Exhibit No. 22
[Letter, April 8, 1911—Acting Commissioner to
Fritch].

DEPARTMENT OF COMMERCE AND LABOR.

Bureau of Fisheries,
Washington. [78—36]

April 8, 1911.

Mr. J. Homer Fritch,
Fife Building,
San Francisco, Calif.

Sir:

In accordance with the suggestion in your telegram of the 6th instant, there are transmitted 6 copies of the form of charter-party used last year for the steamer HOMER. It is desired that you sign the enclosed copies in a manner conformable to the appropriate resolutions of your corporation and, having had these signatures witnessed and the corporate seal attached, that you return them to this Bureau with as little delay as practicable.

Respectfully,

H. DUNLAP,
Acting Commissioner.

6 enclosures.

Q. Mr. Fritch, did the Government require anything in the way of repairs to the "Homer" before it would charter the "Homer" for the season 1911?

A. She always had to be put in repairs; always had to drydock her and put all repairs into her in perfect order before she started. It is a long trip.

Q. Was there anything particular that was needed

(Deposition of J. Homer Fritch.)

in the way of repairs that were required before the Government would charter her for that particular year; was a new boiler required?

A. A new boiler. [79—37]

Q. What was the cost of installing that new boiler? A. About eight thousand dollars.

Q. Was that new boiler installed by you solely in the expectation of chartering the “Homer” for the season or with the expectation of selling the “Homer” to the Government?

A. I guess it was a little of both; I can’t say that it was.

Mr. THOMAS.—I desire to object to that question and ask that the answer be stricken out on the ground that it calls for a conclusion of the witness.

The Court thereupon sustained respondents’ said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs’ Exception No. 7.

Mr. CASSELL.—Q. Mr. Fritch, would you have installed a new boiler on the “Homer” if you had not been in the expectation of selling the “Homer” to the Government. As its managing owner would you have expended the sum of eight thousand dollars in the installing of a new boiler in the “Homer” if you had not been in the expectation of selling the “Homer” to the Government?

Mr. THOMAS.—Same objection.

The Court thereupon sustained respondent’s said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plain-

(Deposition of J. Homer Fritch.)

tiffs' Exception No. 8. [80—38]

Mr. CASSELL.—Q. Mr. Fritch, I show you a letter dated December 2d, 1910, purporting to be signed by W. I. Lembkey, and upon the stationery of the Department of Commerce and Labor, addressed to you, and being one of the letters heretofore offered in evidence, and I ask you if you received that letter during the month of December, 1910?

A. This is all right; I remember receiving that.

Q. I show you a letter dated December 15th, 1910, purporting to be signed by W. I. Lembkey, and upon the stationery of the Department of Commerce and Labor, addressed to yourself, and being one of the letters heretofore offered in evidence, and received in evidence, and ask you if you recall receiving that letter during the month of December, 1910; do you recall receiving that letter? A. Yes.

Q. Mr. Fritch, you will recall that clause 21 of the charter-party, which is embodied in the agreed statement of facts in this action, read as follows: "That the Charterers have the option, at any time during this Charter, of purchasing the said vessel for the sum of forty-five thousand (\$45,000.00) Dollars, against which any amount paid for the hire of the said Vessel, less cost of operation, shall be set off and deducted, but that the Purchasers shall pay interest at the rate of 6% per annum and insurance on the amount of purchase money from the date of this Charter to the completion of sale." In other words, under the charter-party which you subsequently made with the Government, the Govern-

(Deposition of J. Homer Fritch.)

ment had the right at any time during the charter to purchase the "Homer" from you for \$45,000, allowing the amount in part payment of whatever the Government paid to you as hire for the summer of 1911. Will you state whether or [81—39] not it was your expectation in inserting that clause in the contract that the Government would be able to pay cash for the balance due on the purchase price of the "Homer" at the expiration of the summer after the amount of hire had been paid for the summer months by the Government?

Mr. THOMAS.—I object to that question on the ground that it calls for the conclusion of the witness as to what his expectation was.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 9.

Mr. CASSELL.—Q. Mr. Fritch, I will ask you if in granting the Government an option to purchase the "Homer" by this 21st clause of the charter-party, you had in mind the representation made to you in the two letters to which I have referred, namely, the letters of December 2d, 1910, and December 15th, 1910, to the effect that the Department of Commerce and Labor would have a fund sufficient to pay for the balance of the purchase price of the "Homer" after it had paid the amount of hire for the summer months.

Mr. THOMAS.—Same objection.

The Court thereupon sustained respondents' said

(Deposition of J. Homer Fritch.)

objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 10. [82—40]

Mr. CASSELL.—Q. Mr. Fritch, I ask you if you would have granted the Government this option to purchase the "Homer" had you not believed that the Department of Commerce and Labor had a fund sufficient to pay for the "Homer," as stated in these letters?

Mr. THOMAS.—I object to that question on the ground that it calls for the opinion or conclusion of the witness.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 11.

Mr. CASSELL.—Q. Did you believe that they had a fund of \$20,000 available?

A. Yes; I am pretty sure they had it.

Q. And did you believe they had this fund of \$20,000 referred to in the letters of December 2d, 1910, and December 15th, 1910, to which I have referred? A. Yes.

Counsel for respondents thereupon moved to strike out the answers to the foregoing questions upon the same grounds as those specified in the last exception. The Court thereupon sustained said objection, to which counsel for plaintiffs excepted; and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 12. [83—41]

Q. Mr. Fritch, do you remember how many trips

(Deposition of J. Homer Fritch.)

the "Homer" took for the Government in 1911.

A. I think there were two.

Q. Do you remember about what time the "Homer" returned from its last or second trip?

A. September, I think.

Q. There is set forth on page 11 of the agreed statements of facts in this case the following telegram: "Washington, D. C. September 12, 1911. J. Homer Fritch, Inc., San Francisco, Cal. We would like to have option for purchase of "Homer" extended thirty days on terms mentioned in paragraph 21 of charter otherwise charter to terminate as provided therein. Answer. Signed, Charles Earl, Acting Secretary." Do you recall receiving that telegram on the 12th day of September, 1911?

A. Yes.

Q. Do you recall what time of day you received it?

A. I think it was along about noon.

Q. What did you then do with it?

A. Why, I don't remember.

Q. Did you show it to Mr. Lembkey?

A. Yes, I showed it to Lembkey.

Q. Where did you meet Lembkey?

A. Let's see; I met Lembkey in the office, I think, or in the bank; I ain't sure which, whether I did not meet him in the bank.

Q. Did you have any discussion with him concerning that telegram? A. Yes.

Q. Will you state what that discussion was? [84—42]

A. Well, I don't remember exactly how. It

(Deposition of J. Homer Fritch.)

seemed to be very favorable; it looked as if the Government was going to take it, and one thing and another, and we sent a telegram on acknowledging that. Isn't there a telegram there?

Q. Mr. Fritch, I will read you a telegram set forth in page —— of the agreed statement of facts as follows: "San Francisco, September 14th, 1911. Acting Secretary Department of Commerce and Labor, Washington, D. C. As requested in your telegram of 12th instant charter Steamer "Homer" hereby extended for further period of thirty days from September 13th, 1911, with option of purchase. Signed J. Homer Fritch, Inc." I will ask you if that is the telegram to which you just referred as one which you sent in reply to the telegram of September 12th?

A. Yes.

Q. State if you remember when you sent that telegram, where you were when you sent it?

A. No, I don't.

Q. Where did you go with Mr. Lembkey when you showed him that telegram, the telegram of the 12th, the one that you received from the Commissioner?

A. That is the question in my mind, whether that was not the telegram I showed him in the bank.

Q. Who else was present at that meeting in the bank? A. Mr. John D. McKee.

Q. Was anyone else present that you remember?

A. No.

Q. When you refer to the bank you mean the Mercantile Trust Company of San Francisco, do you not? A. Yes.

(Deposition of J. Homer Fritch.)

Q. On California Street? A. Yes. [85—43]

Q. And you were in the directors' room of that bank? A. Yes.

Q. And Mr. McKee was present? A. Yes.

Q. And Mr. Lembkey was present? A. Yes.

Q. Did you have the original charter with you at that time, the charter which is referred to in the agreed statement of facts?

A. No, I don't think so.

Q. Who had it at that time?

A. Well, Mr. Lembkey had it. We had three copies, you know—we had three or four copies.

Q. I hand you this document and ask you if that is one of the original copies of the charter. A. Yes.

Q. That is one of the original copies?

A. Yes, that is one of the original copies.

Q. I will ask you to look on page 8 of that original and identify if you can Mr. Lembkey's signature at the bottom of the page.

A. Yes, that is Mr. Lembkey's signature.

Q. Are you familiar with Mr. Lembkey's handwriting? A. Yes.

Q. And that is his signature?

A. That is his signature.

Mr. CASSELL.—I will offer that original copy of the charter-party in evidence and offer only the 8th page of it, it being stipulated that the rest is identical with the copy referred to in the agreed statement of facts.

(Deposition of J. Homer Fritch.)

[Exhibit—Page 8 of Charter-Party.]

“-8-”

J. HOMER FRITCH

(Incorporated) (Seal)

J. M. LITCHFIELD, Witness to J. HOMER FRITCH, Prest.
the signature of Agents.

.....,

.....,

Dated at19..

[86—44]

Subject to approval of Dept.
of Com. & Labor:—

J. M. LITCHFIELD, Witness
the signature of a copy of the
original Charter-party.

W. I. LEMBKEY,
Agent Seal Fisheries.

According to telegram of September 12th received from Mr. Chas. Earl, Acting Secretary, Department of Commerce & Labor, this Charter is hereby extended for a period of 30 days from September 13th, 1911.

Subject to approval of Dept. of Commerce & Labor:

W. I. LEMBKEY,
Agent Seal Fisheries.

Q. I will ask you to look at page 8 of the original copy of the charter-party which is now in your hand, and particularly at the endorsement at the bottom of that page referring to the extension of the charter-party. I will ask you if you recall that endorsement being written upon that copy of the charter-party at that meeting in the Mercantile Trust Company.

A. I think that we adjourned to my office and wrote it; I think so; I won't be positive.

(Deposition of J. Homer Fritch.)

Q. Can you state that you either returned to your office and it was written on there in your office or that it was written at the Mercantile Trust Company?

A. Yes, it was one way or the other, but I believe it was in my office. [87—45]

Q. Did you see Mr. Lembkey sign his name to it?

A. Yes.

Q. Was there any discussion about it between you and Mr. Lembkey?

A. No: it was Mr. Lembkey's own suggestion.

Q. Did Lembkey say to you whether or not he believed that the charter had been extended by the Government?

Mr. THOMAS.—Object to the question on the ground that Lembkey's statement would not be binding on the Government in any event.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as plaintiffs' Exception No. 13.

Mr. CASSELL.—Q. Did Lembkey suggest that you communicate with the Government by wire?

A. In reference to what?

Q. In reference to the extension of the charter as suggested in the telegram of the 12th of September?

A. Yes. He not only suggested that we communicate with the Government—

Q. Let me ask you the question: Who prepared that telegram that was sent to the Department?

A. He did.

(Deposition of J. Homer Fritch.)

Q. He simply drew the phraseology of it?

A. Yes. [88—46]

Q. After the receipt of that telegram from the Government and after that endorsement had been put upon the charter which you have spoken of, what did you do with the steamer "Homer"?

A. Put her over in Oakland Creek and let her lay there, laid her up.

Q. Did Mr. Lembkey know that it was over there?

A. Yes.

Q. Did you tell Mr. Lembkey that it was over there? A. Yes.

Q. Did Mr. Lembkey go aboard?

A. I think he did, yes.

Q. How long after that was it that Mr. Lembkey went away, do you remember? A. No.

Q. How long did the "Homer" remain over there at the Oakland Creek?

A. Well, she remained the whole of that month anyhow, and how much longer I could not say now.

Q. Do you remember receiving a telegram from the Department of Commerce and Labor at any time in which they stated they would not be in a position to purchase the "Homer"? A. No.

Q. Well, you remember that the Government did not purchase the "Homer"? A. No, they did not.

Q. When did the Department tell you for the first time?

A. I don't know. Ain't that among those papers?

Q. There is a telegram referred to in the agreed

(Deposition of J. Homer Fritch.)

statement of facts in this case dated October 12th, 1911, addressed to J. Homer Fritch, Inc., signed by I. H. Dunlap, Acting Commissioner, which says, "Replying to yours October 10th Bureau of [89--47] Fisheries is not in position to purchase "Homer." That telegram is dated October 12th, 1910, just one month after the former telegram which we have referred to. Now, do you recall receiving such a telegram from the Government? Look at it; do you recall that telegram? A. Yes.

Q. That was one month, that was October 12th?

A. Yes.

Q. Now, did the Department of Commerce and Labor or any official of that Department or any one at all advise you at any time prior to October 12th, 1911, that the Department took the position that the charter had not been extended; did any one tell you prior to that date that the charter had not been extended; did the Government wire you to that effect?

A. I don't seem to remember it; is there anything in any of the telegrams?

Q. There is this telegram, Mr. Fritch, of October 12th, 1911. A. October 12th.

Q. This is the one I showed you (handing).

A. Oh, I see. No.

Q. Were there any telegrams received by you from the Department of Commerce and Labor or from any official of the Department of Commerce and Labor in which they said, "We do not consider that the charter has been extended," or "We won't exercise the option to purchase the 'Homer'?"

(Deposition of J. Homer Fritch.)

A. Not that I know of, unless they are in that file.

Q. You have no recollection of receiving any such telegram? A. No, I have not. [90—48]

Q. Did anyone tell you after that telegram which you sent on the 14th, at any time prior to this October 12th telegram, that the charter had not been extended? A. I don't know.

Q. You don't remember, anyway?

A. I don't remember, no. I don't remember when the charter was thrown up, or when they notified me that it would not be accepted.

Q. You received no telegrams from the Department concerning that matter which are not in either the agreed statement of facts in this case or in that file which you have offered in evidence?

A. I don't think so. I think you have got everything in that file—that is, you had all the papers that I had.

Q. And if you had received a telegram from the Government between the 12th day of September, 1911, and the 12th day of October, 1911, it would be in that file?

A. It would be in that file, yes.

Q. Do you remember whether during the month of September, 1911, you received any offer from any one other than the Government to purchase the steamer "Homer"?

Mr. THOMAS.—We object to that question as incompetent, irrelevant and immaterial.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plain-

(Deposition of J. Homer Fritch.)

tiffs now assign said exception to said ruling as Plaintiffs' Exception No. 14. [91—49]

Mr. CASSELL.—Q. Were negotiations pending during the month of September with other parties than the Department of Commerce and Labor in which you were looking towards the sale of the Steamer "Homer" to such parties in the event that the Government did not exercise its options?

Mr. THOMAS.—Same objection.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 15.

Mr. CASSELL.—Q. Did those negotiations subsequently go through when the Government failed to exercise its option?

Mr. THOMAS.—Same objection.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 16.

Cross-examination.

Mr. THOMAS.—Q. Mr. Fritch, were your relations with Mr. Lembkey friendly or otherwise?

A. Friendly—business relations. We had our relations every year, he representing the Government and me representing the owners of the ship. It was all business, right straight through, but still he was always friendly. [92—50]

Q. What were the circumstances of his drawing up that telegram you referred to that was sent either

(Deposition of J. Homer Fritch.)

from the bank or from your office?

A. We had talked the whole matter over in the bank and he said, "Yes"—he says, "That looks as if we had better—that is—well, that it should go ahead"; and he says, "I think you had better telegraph to them and tell them to extend it."

Q. Who sent that telegram?

A. I sent the telegram.

Q. Who wrote it? A. Mr. Lembkey wrote it.

Redirect Examination.

Mr. CASSELL.—Q. Mr. Fritch, after you received that telegram of September 12th from the Department and after Mr. Lembkey endorsed that extension on the copy of the charter-party to which we referred, and after you sent the telegram on the 14th, did you or did you not suppose that the charter-party had been extended for another month?

Mr. THOMAS.—I object to that question on the ground it calls for the conclusion of the witness.

The Court thereupon sustained respondents' said objection, to which plaintiff excepted, and plaintiffs now assign said exception to said ruling as plaintiffs' Exception No. 17. [93—51]

Mr. CASSELL.—Q. I am asking you for your belief. In putting the "Homer" out at the Oakland Creek, did you or did you not suppose that the charter had been extended and that it was there for the use of the Government?

Mr. THOMAS.—Same objection.

The Court thereupon sustained respondents' said objection, to which plaintiffs excepted, and plain-

(Deposition of J. Homer Fritch.)

tiffs now assign said exception to said ruling as Plaintiffs' Exception No. 18.

Plaintiffs rest.

Mr. THOMAS.—If your Honor please, I desire to offer in evidence a copy of an original appointment dated May 10, 1910, of Walter I. Lembkey as Agent of the Seal Fisheries in Alaska, together with an inclosure which is attached to it. There are only two pages of the inclosure I desire to offer in evidence, the first page reading as follows:

“W. I. LEMBKEY, Agent in charge Seal Fisheries, Washington, D. C.

First. Order to proceed to Islands. You are directed to leave Washington at a date to be determined hereafter and to proceed to the Pacific Coast; there you will purchase at reasonable prices after first securing competition, bids whenever practical, such merchandise as will be required in the Pribylof Islands for the natives and others. Preliminary arrangements have been made by this Bureau for chartering the steamer ‘Homer’ to transport these supplies to the islands [94—52] and to bring the sealskins from the islands in the fall. You are directed to complete the arrangements for such chartering and to sign such charter for the Government subject to the approval of the Department of Commerce and Labor.”

Then turning to paragraph 37 of the inclosure:

“Conclusion: Should questions arise involving matters not covered by these instructions it will be your duty to report the facts to the Department and

(Deposition of J. Homer Fritch.)

to await instructions except in cases requiring immediate decision, when you will take such action as sound judgment dictates.”

This is certified by William Redfield, Secretary of Commerce.

Mr. CASSELL.—I object to this document upon the ground that Mr. Lembkey occupied a position the authority under which he held being defined by the statutes of the United States, to wit, the particular statute provides for the appointment of an agent for the Seal Fisheries for the Department of the Interior; 1 Fed. Stats. Annotated, 429. On the further ground that Mr. Lembkey was held out in the Department as its agent and as authorized to consummate the transactions that are involved here; upon the further ground that no notice of any limitations which may appear upon his authority in this document was ever brought to the notice of the plaintiffs. [95—53]

The COURT.—In dealing with Government agents you do not need to bring to the attention of the parties dealing with them the limitations of their powers; they are circumscribed by the law and everybody is presumed to know the law. It is not like dealing with a private agency at all.

Mr. CASSELL.—We contend that the law actually did define his authority. He was simply appointed as agent of the Seals Fisheries. There is one further ground of objection—there is nothing in this document that in any way limits Lembkey’s authority so as to prevent him from taking part in the transactions.

(Deposition of J. Homer Fritch.)

The COURT.—That ground would be in your favor.

The Court thereupon overruled plaintiffs' said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 19.

The cause was thereupon argued by counsel for the respective parties, and therupon the following proceedings were had:

The COURT.—I do not think, Mr. Cassell, that the Court would be justified in rendering a judgment against the Government on such uncertain evidence. There is room, however, for a different view, perhaps, but it should be taken by an Appellate Court. I think that, sitting as a court of first instance, I would not be justified in granting the relief asked in your second cause of action. You may have full [96—54] findings and if the Circuit Court of Appeals takes a different view it would simply result in judgment going your way for the balance. Judgment can go under the first cause of action for the amount due thereunder.

Mr. CASSELL.—And with interest, your Honor?

The COURT.—I suppose they are entitled to interest, aren't they?

Mr. THOMAS.—I think they are, if the Court please.

Mr. CASSELL.—I request the Court to find these facts: That for several years prior to the year 1911, the Department of Commerce and Labor had chartered from the plaintiffs the steamship "Homer"

(Deposition of J. Homer Fritch.)

for a period of from three to four months during the summer of each year; that the time of year during which the said "Homer" had been chartered by said Department during said years was usually the months of June, July, August, and a portion of the month of September.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 20.

Mr. CASSELL.—I request the Court to find as follows:

That the said "Homer" was used by said Department in connection with the carrying on of the Alaska Seal Fisheries, and particularly for the purpose of carrying supplies to the Pribilof Islands and of returning with a cargo of skins. [97—55]

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 21.

Mr. CASSELL.—I request the Court to find as follows:

That said steamship "Homer" was peculiarly adapted to the said purposes of the Department in connection with the said work of said Alaska Seal Fisheries.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said ex-

(Deposition of J. Homer Fritch.)

ception to said ruling as Plaintiffs' Exception No. 22.

Mr. CASSELL.—I request the Court to find as follows:

That for some time prior to the year 1911, said Department of Commerce and Labor had been desirous of purchasing said steamship "Homer" for the use of said Alaska Seal Fisheries.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Excetion No. 23.

Mr. CASSELL.—I request the Court to find as follows:

That the adaptability of said steamship "Homer" for the purposes of said Department in connection with said Alaska Seal Fisheries was recognized by W. I. Lembkey, the agent of said Department of Commerce and Labor for the said Alaska Seal Fisheries, and by George M. Bowers, the Commissioner of Fisheries, of the Department of Commerce and Labor, and it was desired by said Bowers and said Lembkey that said "Homer" should be purchased by the said Department for the use of said Alaska Seal [98—56] Fisheries, as aforesaid.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 24.

Mr. CASSELL.—I request the Court to find as follows:

(Deposition of J. Homer Fritch.)

That during the fall of 1910 and the spring of 1911, negotiations were pending between said Department of Commerce and Labor and the plaintiffs, looking towards the purchase of said steamship "Homer" by said Department from said plaintiffs.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling of Plaintiff's Exception No. 25.

Mr. CASSELL.—I request the Court to find as follows:

That prior to the 24th day of April, 1911, and the entering into of the charter-party referred to in the agreed statement of facts herein, the said Commissioner and the said Lembkey advised plaintiffs that the said Department desired to purchase said "Homer," but did not then have on hand and would not have on hand during the summer of 1911 a fund sufficient to purchase said "Homer" outright; that at said last-mentioned time, said Commissioner and said Lembkey further advised said plaintiffs that the said Department had and would have on hand a fund of \$20,000, which was and would be available for the purchase of said steamship "Homer," and that the said Department had on hand a further sum which, though not available for the purchase of said "Homer," would be available for the chartering thereof. [99—57]

The Court thereupon denied said request and re-

(Deposition of J. Homer Fritch.)

fused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 26.

Mr. CASSELL.—I request the Court to find as follows:

That at said last-mentioned time, said Commissioner and said Lembkey further advised said plaintiffs that, if said Department were to charter the "Homer" for the customary period during the summer of 1911, it would be on the understanding that the charter money so paid should apply on the purchase price of the "Homer," and further advised plaintiffs that the charter might then be prolonged by laying the "Homer" up in the Oakland Creek, or by some other arrangement, until the charter money should reach an amount equal to the balance of the purchase price.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 27.

Mr. CASSELL.—I request the Court to find as follows:

That section 21 of the charter-party of April 24, 1911, was inserted at the request of the Department of Commerce and Labor, and that prior to the date of the charter-party plaintiffs were advised by said Bowers and said Lembkey that, if Section 21 were inserted, the Department might desire to extend the

(Deposition of J. Homer Fritch.)

charter beyond the time when the "Homer" should return from Alaska, for the purpose of enabling the Department to pay such a further amount on the charter hire of the vessel as would, when added to the amount previously paid thereon bring the total to within \$20,000 of the purchase price of the "Homer." [100—58]

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 28.

Mr. CASSELL.—I request the Court to find as follows:

That upon receipt of this telegram of September 12, 1911, and prior to noon of that day, the plaintiffs exhibited the telegram to W. I. Lembkey, and Lembkey stated to them that, in his belief, it was the intention of the said Department to extend the charter-party for a further period of thirty days, and that the said Lembkey thereupon endorsed upon the charter-party the extension which appears at the end thereof.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 29.

Mr. CASSELL.—I request the Court to find as follows:

That the said Lembkey drafted the telegram of

(Deposition of J. Homer Fritch.)

September, 1911, hereinbefore set forth and advised plaintiffs that it be sent to the Department.

The Court thereupon denied said request and refused to make said findings, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception 30.

Mr. CASSELL.—I request the Court to find as follows:

That at or about noon of the 12th day of September, 1911, and after the receipt of the telegram of September 12, 1911, the said "Homer" was placed in the Oakland Creek by plaintiffs and there remained until subsequent to the 13th day of October, 1911, and the said Lembkey was fully advised [101—59] of the fact that the said "Homer" had been placed in Oakland Creek as aforesaid, and that said "Homer" was to remain there as aforesaid.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 31.

Mr. CASSELL.—I request the Court to find as follows:

That it was the intention of all of the parties by the telegram of September 12, 1911, in view of all of the circumstances, to extend or offer to extend the charter-party of April 24th for a further period of thirty days.

The Court thereupon denied said request and re-

(Deposition of J. Homer Fritch.)

fused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 32.

Mr. CASSELL.—I request the Court to find as follows:

That the meaning of the word "otherwise" used in the telegram of September 12, 1911, from the Department of Commerce and Labor to plaintiffs was, in view of all of the circumstances "in any other event," and not "in other respects." That is to say, the Department of Commerce and Labor, by said telegram meant that the said charter-party of April 24, 1911, should be terminated in the event that the option mentioned in Section 21 thereof was not extended, but that, if said option was extended, the charter was likewise to be extended for a further period of thirty days.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as [102—60] Plaintiffs' Exception No. 33.

Mr. CASSELL.—I request the Court to find as follows:

That the Department of Commerce and Labor duly received the telegram of September 14, 1911, and the telegram of October 10, 1911, set forth in the agreed statement of facts, and that, notwithstanding, the said Department did not advise the plaintiffs or any of them in any way that it had not

(Deposition of J. Homer Fritch.)

intended to extend said charter-party until after the 25th day of October, 1911.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 34.

Mr. CASSELL.—I request the Court to find as follows:

To find in favor of the plaintiffs upon the second count upon the ground that there is no substantial evidence to support a judgment in favor of the defendant upon the said second count.

The Court thereupon denied said request and refused to make said finding, to which ruling of the Court plaintiffs excepted, and now assign said exception to said ruling as Plaintiffs' Exception No. 35.

The Court thereupon proceeded to make its findings and, among other things, found as follows:

“That the steamship ‘Homer’ was fully discharged of her cargo and turned over to the owners by the charterer on or prior to the 12th day of September, 1911, at the port of San Francisco, California.” [103—61]

To the making of this “finding” plaintiffs duly objected upon the ground that there was no substantial evidence before the Court to support it.

The Court thereupon overruled plaintiffs said objection, to which ruling plaintiffs duly excepted, and now assign said exception as Plaintiffs' Exception No. 36.

The Court also found, among other things, as follows:

“That W. I. Lembkey did not have authority to extend the charter-party beyond the 12th day of September, 1911, and his attempted extension thereof was not ratified or approved by the Department of Commerce and Labor, or by any Department or Agent of the defendant.”

Counsel for plaintiffs duly objected to the making of this finding upon the ground that there was no substantial evidence before the Court to support it.

The Court overruled said objection, to which ruling plaintiffs duly excepted, and plaintiffs now assign said exception as Plaintiffs' Exception No. 37.

The Court also found as follows:

“That there was no contract or agreement between the plaintiffs and the defendant extending the charter-party beyond September 12, 1911.”

Counsel for plaintiffs duly objected to the making of this finding upon the ground that there was no substantial evidence before the Court to support it.

The Court thereupon overruled said objection, to which ruling plaintiffs duly excepted, and now assign said exception as Plaintiffs' Exception No. 38.
[104—62]

The foregoing constitutes all of the proceedings and all of the testimony offered and received on the trial of said action, and now, within the time required by law and the rules of this Court, said plaintiffs propose the foregoing as and for their bill of exceptions to the rulings of the Court made during

the trial of the above-entitled action, and to the decision of said Court, and pray that it may be settled and allowed as correct.

DATED San Francisco, California, November, 11th, 1915.

IRA A. CAMPBELL,
Attorney for Plaintiff.

Stipulation as to the Correctness of Bill of Exceptions.

IT IS HEREBY STIPULATED that the above and foregoing constitutes a true and correct bill of exceptions in the above-entitled action, and that the same contains all of the proceedings had, and all of the testimony offered and received on the trial of the said action, and all of the rulings of the Court made during the trial of said action, and that the same may be settled and allowed as and for the bill of exceptions to such rulings and to the decision of the Court herein.

Dated San Francisco, California, November 11th, 1915.

IRA A. CAMPBELL,
Attorney for Plaintiffs and Petitioners,
JNO. W. PRESTON,
U. S. Attorney.

M. A. THOMAS,
Assistant U. S. Attorney.

Attorneys for Respondent [105—63]

**Order Settling, Certifying and Allowing Bill of Ex-
ceptions.**

The foregoing bill of exceptions now being presented in due time and as amended by the Court and found to be correct, I do hereby certify that the said bill is a true bill of exceptions and contains all of the proceedings had and all of the testimony offered and received on the trial of the said action, and all of the rulings of the Court made during said trial, and all of the exceptions of the respective parties thereto.

Dated November 15th, 1915.

WM. C. VAN FLEET,
United States District Judge, Northern District of
California.

[Endorsed]: Filed Nov. 15, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [106—64]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL
PARKER BURNS, CECILIA SUDDEN,
JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondent.

Stipulation and Order Extending Time to File Findings, etc.

It is hereby stipulated and agreed by and between the respective parties hereto that the plaintiffs above named may have to and including the 12th day of July, 1915, within which to prepare a draft of findings and to deliver the same to the clerk of the above-entitled court for the Judge thereof, and to serve a copy thereof upon the above-named respondent pursuant to Rule 63 of the Rules of the above-entitled court, and that the said respondent shall have five (5) days thereafter within which to deliver to the clerk of said court, to serve upon said plaintiffs such proposed amendments or additions to such findings as it may desire.

IT IS FURTHER STIPULATED AND AGREED that said findings shall thereafter be settled by the Judge of said court and thereafter engrossed by said respondent as provided by said Rule 63.

IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto that no judgment shall be entered in said cause [107] until the said findings shall have been signed and filed as aforesaid, and that plaintiffs' attorney may have to and including twenty (20) days after written notice of the entry of judgment in said action within which to prepare, serve and file its proposed bill of exceptions for use upon the appeal, or writ of error from the said judgment.

108 *J. Homer Fritch, Incorporated, et al.*

Dated July 9th, 1915.

IRA A. CAMPBELL,
Attorney for Plaintiffs.
JOHN W. PRESTON,
United States Attorney.

Good cause appearing therefor, and upon the foregoing stipulation, IT IS SO ORDERED this 9th day of July, 1915.

WM. H. SAWTELLE,
United States District Judge.

[Endorsed]: Filed Jul. 9, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [108]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a corporation, E. T. KRUSE, MARY BELL PARKER BURNS, CECILIA SUDDEN, JAMES HOGG, JAMES P. TAYLOR and KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondent.

Stipulation and Order Extending Time to File Findings, etc.

It is hereby stipulated and agreed by and between the respective parties hereto that the plaintiffs above named may have to and including the first day of

August, 1915, within which to prepare a draft of findings and to deliver the same to the clerk of the above-entitled court for the Judge thereof, and to serve a copy thereof upon the above-named respondent pursuant to Rule 63 of the Rules of the above-entitled Court, and that the said respondent shall have five (5) days thereafter within which to deliver to the clerk of said court, to serve upon said plaintiffs, such proposed amendments or additions to such findings as it may desire.

It is further stipulated and agreed that said findings shall thereafter be settled by the Judge of said court and thereafter engrossed by said respondent as provided by said [109] Rule 63.

It is further stipulated and agreed by and between the parties hereto that no judgment shall be entered in said cause until the said findings shall have been signed and filed as aforesaid, and that plaintiffs' attorney may have to and including twenty (20) days after written notice of the entry of judgment in said action within which to prepare, serve and file its proposed bill of exceptions for use upon the appeal, or writ of error from the said judgment.

Dated July 12, 1915.

IRA A. CAMPBELL,
Attorney for Plaintiffs.

JOHN W. PRESTON,
United States Attorney.

Good cause appearing therefor, and upon the foregoing stipulation, IT IS SO ORDERED this 13th day of July, 1915.

WM. C. VAN FLEET,
United States District Judge.

110 *J. Homer Fritch, Incorporated, et al.*

[Endorsed]: Filed Jul. 14, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [110]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL
PARKER BURNS, CECILIA SUDDEN,
JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondent.

**Stipulation and Order Extending Time to File Find-
ings, etc.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that the
plaintiffs above named may have to and including
the 14th day of August, 1915, within which to pre-
pare a draft of findings and to deliver the same to
the clerk of the above-entitled court for the Judge
thereof, and to serve a copy thereof upon the above-
named respondent pursuant to Rule 63 of the Rules
of the above-entitled court, and that the said re-
spondent shall have five (5) days thereafter within
which to deliver to the clerk of said court, to serve
upon said plaintiffs, such proposed amendments or
additions to such findings as it may desire.

IT IS FURTHER STIPULATED AND AGREED that said findings shall thereafter be settled by the Judge of said court and thereafter engrossed by said respondent as provided by said Rule 63.

IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto that no judgment shall be entered in said cause [111] until the said findings shall have been signed and filed as aforesaid, and that plaintiffs' attorney may have to and including twenty (20) days after written notice of the entry of judgment in said action within which to prepare, serve and file its proposed bill of exceptions for use upon the appeal, or writ of error from the said judgment.

Dated July 17, 1915.

IRA A. CAMPBELL,
Attorney for Plaintiffs.
JNO. W. PRESTON,
United States Attorney.

Good cause appearing therefor, and upon the foregoing stipulation, IT IS SO ORDERED, this 17th day of July, 1915.

WM. C. VAN FLEET,
United States District Judge.

[Endorsed]: Filed Jul. 19, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [112]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL
PARKER BURNS, CECILIA SUDDEN,
JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondent.

**Stipulation and Order Extending Time to File Find-
ings, etc.**

IT IS HEREBY STIPULATED AND AGREED
by and between the respective parties hereto that the
plaintiffs above named may have to and including
the 14th day of September, 1915, within which to
prepare a draft of findings and to deliver the same
to the clerk of the above-entitled court for the Judge
thereof, and to serve a copy thereof upon the above-
named respondent, pursuant to Rule 63 of the Rules
of the above-entitled court, and that the said re-
spondent shall have five (5) days thereafter within
which to deliver to the clerk of said court, to serve
upon said plaintiffs, such proposed amendments or
additions to such findings as it may desire.

IT IS FURTHER STIPULATED AND
AGREED that said findings shall thereafter be set-
tled by the Judge of said court and thereafter en-

grossed by said respondent as provided by said Rule 63.

IT IS FURTHER STIPULATED AND AGREED by and between the parties hereto that no judgment shall be entered in said cause until the said findings shall have been signed and filed, as [113] aforesaid, and that plaintiffs' attorney may have to and including twenty (20) days after written notice of the entry of judgment in said action within which to prepare, serve and file its proposed bill of exceptions for use upon the appeal, or writ of error from the said judgment.

Dated Aug. 11th, 1915.

IRA A. CAMPBELL,
Attorney for Plaintiffs.

JNO. W. PRESTON,
United States Attorney.

Good cause appearing therefor, and upon the foregoing stipulation, IT IS SO ORDERED.

M. T. DOOLING,
United States District Judge.

Dated Aug. 11th, 1915.

[Endorsed]: Filed Aug. 11, 1915. Walter B. Maling, Clerk. [114]

*In the District Court of the United States in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL
PARKER BURNS, CECILIA SUDDEN,
JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondent.

**Stipulation and Order Extending Time to File Find-
ings, etc.**

IT IS HEREBY STIPULATED AND AGREED by and between the respective parties hereto that the plaintiffs above named may have to and including the 14th day of November, 1915, within which to prepare a draft of findings and to deliver the same to the clerk of the above-entitled court for the judge thereof, and to serve a copy thereof upon the above-named respondent, pursuant to Rule 63 of the Rules of the above-entitled court, and that the said respondent shall have five days thereafter within which to deliver to the clerk of said court, to serve upon said plaintiffs, such proposed amendments or additions to such findings as it may desire.

IT IS FURTHER STIPULATED AND AGREED that said findings shall thereafter be settled by the Judge of said court and thereafter en-

grossed by said respondent as provided by [115]
said Rule 63.

IT IS FURTHER STIPULATED AND
AGREED by and between the parties hereto that no
judgment shall be entered in said cause until the
said findings shall have been signed and filed, as
aforesaid, and that plaintiffs' attorney may have to
and including twenty days after written notice of
the entry of judgment in said action within which
to prepare, serve and file its proposed bill of excep-
tions for use upon the appeal, or writ of error from
the said judgment.

Dated October 11th, 1915.

IRA A. CAMPBELL,
Attorney for Plaintiffs.
JNO. W. PRETSON,
United States Attorney.

Good cause appearing therefor, and upon the fore-
going stipulation, IT IS SO ORDERED.

WM. C. VAN FLEET,
United States District Judge.

Dated October 13, 1915.

[Endorsed]: Filed Oct. 13, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [116]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL
PARKER BURNS, CECILIA SUDDEN,
JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondent.

Petition for Writ of Error.

J. Homer Fritch, Incorporated, a corporation, E. T. Kruse, Mary Bell Parker Burns, Cecelia Sudden, James Hogg, James P. Taylor and Kate E. Spiers, Petitioners and Plaintiffs in the above-entitled action, feeling themselves aggrieved by the decision of the Court denying them relief, and holding that they take nothing by reason of the second count in their complaint and petition contained, and by that portion of the judgment of the Court entered herein on the 5th day of Nov., 1915, wherein it was ordered, adjudged and decreed that said plaintiffs and petitioners take nothing by their said second count so contained in their said petition and complaint, come now by Ira A. Campbell, Esquire, their attorney, and petition said Court for an order allowing said petitioners and plaintiffs to prosecute a writ of error to the Honorable, the United States

Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the [117] United States in that behalf made and provided, and also that an order be made fixing the amount of security which the plaintiffs and petitioners shall furnish upon said writ of error.

And your petitioners will ever pray.

November 15th, 1915.

IRA A. CAMPBELL,
Attorney for said Petitioners and Plaintiffs.

[Endorsed]: Filed Nov. 15, 1915. W. B. Mañing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[118]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No 15,599.

J. HOMER FRITCH, INCORPORATED, a Corporation, E. T. KRUSE, MARY BELL PARKER BURNS, CECILIA SUDDEN, JAMES HOGG, JAMES P. TAYLOR and KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondent.

Assignment of Errors.

Come now J. Homer Fritch, Incorporated, a corporation, E. T. Kruse, Mary Bell Parker Burns, Cecelia Sudden, James Hogg, James P. Taylor and

Kate E. Spiers, petitioners and plaintiffs herein, and make and file the following assignment of errors, upon which they will rely in the prosecution of their writ of error in the above-entitled cause:

1.

The above-entitled Court erred in holding and determining that respondent was entitled to judgment that said plaintiffs take nothing on the second count of their complaint herein.

2.

The Court erred in holding and determining that the charter of the steamer "Homer," dated April 24, 1911, was not extended by the respective parties thereto for a further period of thirty (30) days from and after the 13th day of September, 1911.

[119]

3.

The Court erred in holding and determining that respondent did not become liable to the plaintiffs for the charter hire of the steamer "Homer" for a period of thirty (30) days from and after the 13th day of September, 1911.

4.

The Court erred in holding and determining that by its telegram, dated September 12, 1911, to J. Homer Fritch, Incorporated, the Department of Commerce and Labor did not offer to extend the charter of said steamer "Homer," dated April 24, 1911, for a further period of thirty (30) days.

5.

The Court erred in holding and determining that there was no meeting of minds between plaintiffs

and the said Department of Commerce and Labor with regard to the extension of the charter-party of April 24, 1911, or the option beyond September 12, 1911.

6.

The Court erred in holding and determining that the language of the telegram of September 12, 1911, from the Department of Commerce and Labor to the plaintiffs, taken in connection with the charter-party and paragraph twenty-one (21) thereof and all the evidence introduced on behalf of the parties thereto, shows that the intention of the Department of Commerce and Labor was to secure an extension of the option to purchase merely, and was not to extend or offer to extend the said charter-party for a period of thirty (30) days, or any other period. [120]

7.

The Court erred in holding and determining that notwithstanding any previous correspondence between the Department of Commerce and Labor and the plaintiffs with regard to the purchase of the steamer "Homer," there was no extension of the charter-party beyond the 12th day of September, 1911.

8.

The Court erred in refusing to hold upon the undisputed evidence that it was the intention of the Department of Commerce and Labor in sending said telegram of September 12, 1911, to offer to extend said charter-party of April 24, 1911, for a further period of thirty (30) days.

9.

The Court erred in holding and determining that the Department of Commerce and Labor was not estopped from asserting that it had not intended, by said telegram of September 12, 1911, to offer to extend said charter-party of April 24, 1911, for a further period of thirty (30) days.

10.

The Court erred in refusing to hold that the necessary meaning of said telegram of September 12, 1911, by reason of the language implied therein, was that said Department of Commerce and Labor intended thereby to offer to extend said charter-party of April 24, 1911, for a further period of thirty (30) days.

11.

The Court erred in refusing to hold and determine that the necessary meaning of said telegram of September 12, 1911, by reason of the terms and expressions used therein and by [121] reason of the circumstances under which said telegram was sent, and disclosed by the prior transactions between the parties, and their prior correspondence, as disclosed by the undisputed evidence, was that said Department of Commerce and Labor intended by said telegram to offer to extend said charter-party of April 24, 1911, for a further period of thirty (30) days.

12.

The Court erred in holding and determining that the extension of said charter-party for a further period of thirty (30) days by W. I. Lembkey was never in fact approved by the Department of Commerce and Labor.

13.

The Court erred in holding and determining that said Department of Commerce and Labor was not bound by the statements of said Lembkey, which the undisputed evidence shows were made by said Lembkey to plaintiffs at the time of said alleged extension of said charter party, to the effect that he believed the Department intended to offer to extend said charter-party for a further period of thirty (30) days by said telegram of September 12, 1911.

14.

The Court erred in not holding and determining that the said Department of Commerce and Labor was not bound in any respect by the knowledge or statements or actions of said Lembkey with respect to the extension of said charter-party.

15.

The Court erred in sustaining respondent's objection to a question propounded to the witness, John D. McKee, [122] covered by Plaintiffs' Exception No. 1, as follows:

"Q. Did Mr. Lembkey state, in your presence and in the presence of Mr. Fritch at that time, what he believed the reason of the Government to be for wanting the charter extended a period of 30 days? A. Yes, sir.

Q. State what that was.

Mr. THOMAS.—I object to that, if your Honor please; it is not shown that any statement Mr. Lembkey would make would be binding upon the Government in this matter.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 1."

16.

The Court erred in sustaining respondent's objection to a question propounded to the witness, John D. McKee, covered by Plaintiff's Exception No. 2, as follows:

"Mr. CASSELL.—Q. Will you state what was said by Mr. Lembkey at the time with regard to the purpose of the Department in desiring to extend the charter-party for 30 days.

Mr. THOMAS.—We object to that, if your Honor please, upon the ground that the charter-party shows upon its face that anything Lembkey did was subject to the approval of the Department, and that Lembkey's private conversations with these gentlemen [123] or his statements to them are in no way binding upon the Government.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiff's Exception No. 2."

17.

The Court erred in sustaining respondent's objection to a question propounded to the witness, John D. McKee, covered by Plaintiff's Exception No. 3, as follows:

"Mr. CASSELL.—Q. Will you state what was the nature of the negotiations you then had

pending for the sale of the 'Homer' to other parties in the event that the sale to the Government did not go through in accordance with the terms of the provisions of clause 21 of the charter-party.

Mr. THOMAS.—We object to the question, if your Honor please, upon the ground that the answer would be immaterial, irrelevant and incompetent, and it would have no bearing at all on this case.

The COURT.—He has stated that there were negotiations and that is all that is material; the specific nature of them is not material. The objection is sustained. The fact is, Mr. Cassell, I do not think it is material whether [124] he had other negotiations. He had a right to want to sell the vessel to the Government whether he had other people seeking it, or not.

Mr. CASSELL.—I do not desire to offer anything further in face of your Honor's ruling, but I want to show that the parties were acting in absolutely good faith, and that they actually did have prospects of selling the vessel.

The COURT.—You don't have to show good faith in that regard.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiff's Exception No. 3."

18.

The Court erred in sustaining respondent's objection to the offer by plaintiffs of that certain contract

dated September 15, 1911, wherein one W. S. Scammell agreed to purchase said steamer "Homer" in the event that the United States Government should not exercise its option, and, in accordance with the terms of which said agreement, said Scammell deposited one thousand (1,000) dollars as the first payment on account of the purchase price thereof, said payment to be returned in the event of the exercise by the United States Government of its said option, which said objection is more particularly shown by Plaintiffs' Exception No. 5.

19.

The Court erred in sustaining respondent's objection to a question propounded to the witness, John D. McKee, covered [125] by Plaintiffs' Exception No. 6, as follows:

"Mr. CASSELL.—Q. Was it the belief of yourself, at that meeting and at all times thereafter during the months of September and October, 1911, that that charter had been extended by those telegrams?

Mr. THOMAS.—I desire to object to that question, your Honor, upon the ground that the belief of Mr. McKee is in no wise binding upon the defendant.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 6."

20.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J.

Homer Fritch, as shown by Plaintiffs' Exception No. 7, as follows:

"Q. Was that new boiler installed by you solely in the expectation of chartering the 'Homer' for the season or with the expectation of selling the 'Homer' to the Government?

A. I guess it was a little of both; I can't say that it was.

Mr. THOMAS.—I desire to object to that question and ask that the answer be stricken out on the ground that it calls for a conclusion of the witness. [126]

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 7."

21.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J. Homer Fritch, as shown by Plaintiffs Exception No. 8, as follows:

"Mr. CASSELL.—Q. Mr. Fritch, would you have installed a new boiler on the 'Homer' if you had not been in the expectation of selling the 'Homer' to the Government. As its managing owner would you have expended the sum of eight thousand dollars in the installing of a new boiler in the 'Homer' if you had not been in the expectation of selling the 'Homer' to the Government?

Mr. THOMAS.—Same objection.

The Court thereupon sustained respondent's

said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 8."

22.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J. Homer Fritch, as shown by Plaintiffs' Exception No. 9, as follows:

"Q. Mr. Fritch, you will recall that clause 21 of the charter-party, which is embodied in the agreed statement of facts in this action, read as follows: [127] 'That the Charterers have the option, at any time during this Charter, of purchasing the said vessel for the sum of forty-five thousand (\$45,000.00) Dollars, against which any amount paid for the hire of the said Vessel, less cost of operation, shall be set off and deducted, but that the Purchasers shall pay interest at the rate of 6% per annum and insurance on the amount of purchase money from the date of this Charter to the completion of sale.' In other words, under the charter-party which you subsequently made with the Government, the Government had the right at any time during the charter to purchase the 'Homer' from you for \$45,000, allowing the amount in part payment of whatever the Government paid to you as hire for the summer of 1911. Will you state whether or not it was your expectation in inserting that clause in the contract that the Government would be able to pay cash for the balance due on the purchase

price of the 'Homer' at the expiration of the summer after the amount of hire had been paid for the summer months by the Government.

Mr. THOMAS.—I object to that question on the ground that it calls for the conclusion of the witness as to what his expectation was.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and [128] plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 9."

23.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J. Homer Fritch, as shown by Plaintiffs' Exception No. 10, as follows:

"Mr. CASSELL.—Q. Mr. Fritch, I will ask you if in granting the Government an option to purchase the 'Homer' by this 21st clause of the charter-party, you had in mind the representation made to you in the two letters to which I have referred, namely, the letters of December 2d, 1910, and December 15th, 1910, to the effect that the Department of Commerce and Labor would have a fund sufficient to pay for the balance of the purchase price of the 'Homer' after it had paid the amount of hire for the summer months.

Mr. THOMAS.—Same objection.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 10."

24.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J. Homer Fritch, as shown by Plaintiffs' Exception No. 11, as follows:

"Mr. CASSELL.—Q. Mr. Fritch, I ask you if you would have granted the Government this option to purchase [129] the 'Homer' had you not believed that the Department of Commerce and Labor had a fund sufficient to pay for the 'Homer,' as stated in these letters .

Mr. THOMAS.—I object to that question on the ground that it calls for the opinion or conclusion of the witness.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 11."

25.

The Court erred in granting the motion by respondent to strike out certain answers to questions propounded to the witness, J. Homer Fritch, as shown by Plaintiffs' Exception No. 12, as follows:

"Mr. CASSELL.—Q. Did you believe that they had a fund of \$20,000 available?

A. Yes; I am pretty sure they had it.

Q. And did you believe they had this fund of \$20,000 referred to in the letters of December 2d, 1910, and December 15th, 1910, to which I have referred? A. Yes.

Counsel for respondent thereupon moved to strike out the answers to the foregoing ques-

tions upon the same grounds as those specified in the last exception.

The Court thereupon [130] sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiff's Exception No. 12."

26.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J. Homer Fritch, as shown by Plaintiffs' Exception No. 13, as follows:

"Q. Did Lembkey say to you whether or not he believed that the charter had been extended by the Government?

Mr. THOMAS.—Object to the question on the ground that Lembkey's statement would not be binding on the Government in any event.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiff's Exception No. 13'".

27.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J. Homer Fritch, as shown by Plaintiffs' Exception No. 14, as follows:

"Q. Do you remember whether during the month of September, 1911, you received any offer from anyone other than the Government to purchase the Steamer 'Homer'?

Mr. THOMAS.—We object to that question

as incompetent, irrelevant and immaterial.
[131]

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 14."

28.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J. Homer Fritch, as shown by Plaintiffs' Exception No. 15, as follows:

"Mr. CASSELL.—Q. Were negotiations pending during the month of September with other parties than the Department of Commerce and Labor in which you were looking towards the sale of the Steamer 'Homer' to such parties in the event that the Government did not exercise its option?

Mr. THOMAS.—Same objection.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiff's Exception No. 15."

29.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J. Homer Fritch, as shown by Plaintiffs' Exception No. 16, as follows:

"Mr. CASSELL.—Q. Did those negotiations subsequently go through when the Government failed to exercise its option?

Mr. THOMAS.—Same objection.

The Court thereupon sustained respondent's

[132] said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiff's Exception No. 16."

30.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J. Homer Fritch, as shown by Plaintiffs' Exception No. 17, as follows:

"Mr. CASSELL.—Q. Mr. Fritch, after you received that telegram of September 12th from the Department and after Mr. Lembkey endorsed that extension on the copy of the charter-party to which we referred, and after you sent the telegram on the 14th, did you or did you not suppose that the charter-party had been extended for another month?

Mr. THOMAS.—I object to that question on the ground it calls for the conclusion of the witness.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 17."

31.

The Court erred in sustaining respondent's objection to a question propounded to the witness, J. Homer Fritch, as shown by Plaintiffs' Exception No. 18, as follows:

"Mr. CASSELL.—Q. I am asking you for your belief. In putting the 'Homer' out at [133] the Oakland Creek, did you or did you not suppose that the charter had been extended

and that it was there for the use of the Government?

Mr. THOMAS.—Same objection.

The Court thereupon sustained respondent's said objection, to which plaintiffs excepted, and plaintiffs now assign said exception to said ruling as Plaintiffs' Exception No. 18."

32.

The Court erred in overruling plaintiffs' objection to respondent's offer in evidence of a copy of an original appointment, dated May 10, 1910, of Walter I. Lembkey as Agent of the Seal Fisheries in Alaska, together with an enclosure which was attached to it, upon the ground that said Lembkey's authority was determined by the Federal Statutes, to wit, 1 Fed. Stats. Ann. 429; upon the further ground that said Lembkey was held out by the Department as its agent and as authorized to consummate transactions involved in this action; upon the further ground that no notice of any limitations of his authority was ever brought to the attention of plaintiffs; upon the further ground that upon its face the document did not show any limitation upon Lembkey's authority, so as to prevent him from binding the Department of Commerce and Labor, all of which is more particularly set forth in Plaintiffs' Exception No. 19. [134]

33.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 20.

34.

The Court erred in refusing to make a finding of

fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 21.

35.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 22.

36.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 23.

37.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 24.

38.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 25.

39.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 26.

40.

The Court erred in refusing to make a finding of [135] fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 27.

41.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 28.

42.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plain-

tiffs' Exception No. 29.

43.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 30.

44.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 31.

45.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 32.

46.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 33.

47.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 34. [136]

48.

The Court erred in refusing to make a finding of fact as requested by plaintiffs as set forth in Plaintiffs' Exception No. 35.

49.

The Court erred in overruling plaintiffs' objection to the Court's making the finding referred to in Plaintiffs' Exception No. 36.

50.

The Court erred in overruling plaintiffs' objection to the making of the finding referred to in Plaintiffs' Exception No. 37.

51.

The Court erred in overruling plaintiffs' objection to the making of the finding referred to in Plaintiffs' Exception No. 38.

WHEREFORE, Plaintiffs in Error herein pray that the judgment of the above-entitled court be reversed in so far as it adjudged that plaintiffs take nothing by the second count of their said complaint.

Dated San Francisco, California, November 15th, 1915.

IRA A. CAMPBELL,
Attorney for said Plaintiffs in Error.

[Endorsed]: Filed Nov. 15, 1915. W. B. Maling,
Clerk. By J. A. Schaertzer, Deputy Clerk. [137]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Corporation, E. T. KRUSE, MARY BELL PARKER BURNS, CECELIA SUDDEN, JAMES HOGG, JAMES P. TAYLOR and KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Respondent.

Order Allowing Writ of Error.

Upon motion of Ira A. Campbell, Esquire, attor-

ney for the above-named petitioners and plaintiffs, and upon filing a petition for a writ of error,

IT IS ORDERED that a writ of error be, and it is hereby, allowed to have reviewed in the United States Circuit Court of Appeals for the Ninth Circuit that portion of the judgment heretofore entered herein wherein it is ordered, adjudged and decreed that plaintiffs take nothing by the second count contained in the petition on file herein, and that the amount of bond on said writ of error be and the same is hereby fixed at two hundred fifty (250) dollars.

Dated November 15th, 1915.

WM. C. VAN FLEET,
Judge of Said Court.

[Endorsed]: Filed Nov. 15, 1915, W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[138]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL
PARKER BURNS, CECELIA SUDDEN,
JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Respondent.

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That the undersigned, Massachusetts Bonding and Insurance Company, a corporation, created, organized and existing under and by virtue of the laws of the Commonwealth of Massachusetts, and duly authorized to transact business in the State of California, and fully qualified before the department of justice to execute bonds and undertakings in any and all Federal courts of the United States of America, is held and firmly bound unto the defendant and respondent herein, United States of America, in the full and just sum of two hundred and fifty (250) dollars to be paid to said defendant and respondent, to which payment well and truly to be made the undersigned binds itself and its successors by these presents.

SEALED with our seals and dated this 15th day, of November, 1915. [139]

WHEREAS, J. Homer Fritch, Incorporated, a corporation, E. T. Kruse, Mary Bell Parker Burns, Cecelia Sudden, James Hogg, James P. Taylor and Kate E. Spiers, the above-named petitioners and plaintiffs, have sued out a writ of error in the United States Circuit Court of Appeals in and for the Ninth Circuit to reverse that portion of the judgment entered in the above-entitled action wherein it is ordered, adjudged and decreed that said petitioners and plaintiffs take nothing by the second count contained in the petition or complaint on file in said action.

NOW, THEREFORE, the condition of this obligation is such that if said plaintiffs and petitioners shall prosecute such a writ of error to effect, and answer all damages and costs if they shall fail to make good said plea, then this obligation shall be void; otherwise to remain in full force and virtue.

IN WITNESS WHEREOF, the Massachusetts Bonding and Insurance Company, a corporation, has hereunto caused its corporate name to be signed and attested, and its corporate seal to be affixed by its duly authorized officers at San Francisco, California, this 15th day of November, 1915.

MASSACHUSETTS BONDING AND INSURANCE COMPANY,

By FRANK M. HALL,

Its Attorney-in-Fact.

[Seal]

By S. W. PALMER,

Its Attorney-in-Fact.

The foregoing bond is hereby approved this 15th day of November, 1915.

WM. C. VAN FLEET,

United States District Judge. [140]

[Endorsed]: Filed Nov. 15, 1915. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.
[141]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL
PARKER BURNS, CECELIA SUDDEN,
JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondent.

Praeipce for Transcript of Record.

The clerk of the above-entitled court will please prepare a transcript of the record for the Appel-
late Court in the above-entitled cause, and is hereby directed to insert therein the following:

1. The petition or complaint;
2. The affidavit of service with summons attached;
3. The amended answer of defendant;
4. The stipulation and agreed statement of facts;
5. Stipulation waiving jury;
6. Special findings of fact;
7. Judgment;
8. Plaintiffs' bill of exceptions; [142]
9. All stipulations and orders extending time for
settlement of findings;
10. All papers filed by plaintiffs herein in the
prosecution of its writ of error, including

140 *J. Homer Fritch, Incorporated, et al.*

petition for the writ of error, assignment of errors, order allowing writ of error, writ of error, citation upon writ of error, and bond on writ of error.

Dated San Francisco, California, November 15th, 1915.

IRA A. CAMPBELL,
Attorney for Plaintiffs.

[Endorsed]: Filed Nov. 15, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk. [143]

**[Certificate of Clerk U. S. District Court to
Transcript of Record.]**

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Corporation, E. T. KRUSE, MARY BELL PARKER BURNS, CECELIA SUDDEN, JAMES HOGG, JAMES P. TAYLOR and KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES,

Respondents.

I, Walter B. Maling, Clerk of the District Court of the United States of America, in and for the Northern District of California, do hereby certify that the foregoing one hundred forty-three (143)

pages, numbered from 1 to 143, inclusive, to be a full, true and correct copy of the record and proceedings in the above-entitled cause, in conformity with the praecipe for record filed herein, as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ is \$76.60; that said amount was paid by Ira A. Campbell, Esq., attorney for plaintiff, and that the original writ of error and citation issued in said cause are hereto annexed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 17th day of November, A. D. 1915.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

[Ten Cent Internal Revenue Stamp. Canceled
Nov. 17, 1915. J. A. S.] [144]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL
PARKER BURNS, CECELIA SUDDEN,
JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Respondent.

Writ of Error.

United States of America,—ss.

The President of the United States to the Honor-
able the Judges of the District Court of the
United States for the Northern District of Cali-
fornia, Greeting:

Because in the record and proceedings, as also in
the rendition of a judgment of a plea which is in
the said District Court before you, or some of you,
between J. Homer Fritch, Incorporated, a corpora-
tion, E. T. Kruse, Mary Bell Parker Burns, Ce-
celia Sudden, James Hogg, James P. Taylor and
Kate E. Spiers, petitioners and plaintiffs, and
United States of America, defendant and respond-
ent, a manifest error hath happened to the great
damage of the said J. Homer Fritch, Incorporated,
a corporation, E. T. Kruse, Mary Bell Parker

Burns, Cecelia Sudden, James Hogg, James P. Taylor and Kate E. Spiers, petitioners and plaintiffs, as by said complaint appears, and we being willing that error, if any hath been, [145] should be duly corrected, and full and just justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, together with this writ so that you have the same at the City and County of San Francisco, in the State of California, on the 15th day of December, A. D. 1915, in the Circuit Court of Appeals, to be then and there held, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein, to correct that error, what of right, and according to the laws and customs of the United States should be done.

WITNESS, the Honorable EDWARD D. WHITE, Chief Justice of the United States, the 15th day of Nov., in the year of our Lord one thousand nine hundred and fifteen.

[Seal] WALTER B. MALING,
Clerk of the United States District Court, Northern
District of California.

By J. A. Schaertzer,
Deputy Clerk.

Due admission of service and receipt of copy of the within writ of error is hereby acknowledged

this 16th day of November, 1915.

JNO. W. PRESTON,

M. A. THOMAS,

Attorneys for Respondent. [146]

[Endorsed]: No. 15,599. In the District Court of the United States, Second Division, Northern District of California. J. Homer Fritch, Incorporated, a Corporation, et al., Petitioners and Plaintiffs, vs. United States of America, Respondent. Writ of Error. Filed Nov. 16, 1915. W. B. Mal-
ing, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Answer to Writ of Error.]

The answer of the Judges of the District Court of the United States, in and for the Northern District of California.

The record and all proceedings of the plaint whereof mention is within made, with all things touching the same, we certify under the seal of our said Court, to the United States Circuit Court of Appeals for the Ninth Circuit, within mentioned at the day and place within contained, in a certain schedule to this writ annexed as within we are com-
manded.

By the Court.

[Seal]

WALTER B. MALING,

Clerk.

By J. A. Schaertzer,

Deputy Clerk. [147]

*In the District Court of the United States, in and
for the Northern District of California, Second
Division.*

No. 15,599.

J. HOMER FRITCH, INCORPORATED, a Cor-
poration, E. T. KRUSE, MARY BELL
PARKER BURNS, CECELIA SUDDEN,
JAMES HOGG, JAMES P. TAYLOR and
KATE E. SPIERS,

Petitioners and Plaintiffs,

vs.

UNITED STATES OF AMERICA,

Respondent.

Citation of Writ of Error.

To the President of the United States of America,
to the United States of America, and to Attor-
ney General, and John W. Preston, United
States Attorney General for the Northern Dis-
trict of California, and to M. A. Thomas, Es-
quire, Assistant United States Attorney for the
Northern District of California, Greeting:

YOU AND EACH OF YOU ARE HEREBY
cited and admonished to be and appear in the Cir-
cuit Court of Appeals for the Ninth Circuit at the
City and County of San Francisco, State of Cali-
fornia, within thirty days from and after the date
this citation bears, pursuant to a writ of error filed
in the District Court for the Northern District of
California, Second Division, in the above-entitled
cause whereas J. Homer Fritch, Incorporated, a cor-
poration, E. T. Kruse, Mary Bell Parker Burns,

Cecelia Sudden, James Hogg, James P. Taylor and Kate E. Spiers, are plaintiffs and petitioners, and the United States of America, is defendant and respondent, to show cause, if any there be, why that portion of the judgment [148] heretofore made and rendered in the above-entitled cause on the 5th day of Nov., 1915, wherein it is ordered, adjudged and decreed that said plaintiff take nothing by the second count contained in the petition or complaint on file herein should not be corrected and reversed and why justice should not be done to the parties in that behalf.

WITNESS the Honorable WM. C. VAN FLEET,
United States District Judge for the Northern District of California, this 15th day of Nov., 1915.

WM. C. VAN FLEET,
United States District Judge for the Northern District of California.

Due admission of service and receipt of copy is hereby acknowledged of the within citation and also of the following (1) writ of error; (2) petition for writ of error; (3) bond on writ of error; assignment of errors; order allowing writ of error; praecipe for transcript of record.

San Francisco, California, November 16th, 1915.

JNO. W. PRESTON,

M. A. THOMAS,

Attorneys for Respondent.

Attorneys for Respondent. [149]

[Endorsed]: No. 15,599. In the District Court of the United States, Second Division, Northern District of California. J. Homer Fritch, Incor-

porated, a corporation, et al., Petitioners and Plaintiffs, vs. United States of America, Respondent. Citation of Writ of Error. Filed Nov. 16, 1915. W. B. Maling, Clerk. By J. A. Schaertzer, Deputy Clerk.

[Endorsed]: No. 2683. United States Circuit Court of Appeals for the Ninth Circuit. J. Homer Fritch, Incorporated, a Corporation, E. T. Kruse, Mary Bell Parker Burns, Cecelia Sudden, James Hogg, James P. Taylor and Kate E. Spiers, Plaintiffs in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Northern District of California, Second Division. Filed November 17, 1915. F. D. Monckton, Clerk of the United States Circuit Court of Appeals for the Ninth Circuit. By Meredith Sawyer, Deputy Clerk.

